



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, OLC, RR, FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution in which the Tenant filed for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to comply with the *Manufactured Home Park Tenancy Act* (the “Act”) or the tenancy agreement; for an Order requiring the Landlord to make repairs; for authority to reduce the rent for services or facilities agreed upon but not provided; and to recover the filing fee. At the hearing the Tenant withdrew the application for an Order requiring the Landlord to make repairs, as the septic problem has been rectified since the Tenant filed this Application for Dispute Resolution.

The Tenant stated that several documents and two photographs he wishes to rely upon as evidence, the Application for Dispute Resolution, and the Notice of Hearing were sent to each Landlord, via registered mail, on July 06, 2012. The Tenant submitted a Canada Post receipt that corroborates this testimony. In the absence of evidence to the contrary, I accept that these documents have been served in accordance with section 89 of the *Act*, however neither Landlord appeared at the hearing.

The Tenant stated that he submitted a letter to the Residential Tenancy Branch that was sent to him by the Landlord’s lawyer. He stated that this letter was not served to the Landlord as evidence for these proceedings and it was, therefore, not accepted as evidence for these proceedings.

Preliminary and Procedural Matter

The Tenant stated that he believes this Manufactured Home Park is on property that was previously owned by a First Nation’s Band, but that it has been transferred to private ownership. In the absence of evidence that shows this property is located on property that is under the exclusive jurisdiction of the Federal Government, I find that I have jurisdiction over this tenancy.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to financial compensation for inconveniences associated with temporarily living with a faulty septic system; whether there is a need for an Order requiring the Landlord to comply with the Tenant's complaints regarding noise; and whether the Tenant is entitled to recover the fee for filing this Application for Dispute Resolution.

Background and Evidence

The Tenant stated that this tenancy began in 1998 and that he currently pays monthly rent of \$300.00.

The Tenant stated that sometime in the middle of May of 2012 the Landlord exposed the Tenant's septic field when they were attempting to locate a water leak and that it remained exposed until July 16, 2012. He stated that whenever water was used in his home sewage flowed onto the surface of his yard and that it was always present on the surface, to some degree, during this period of time. He stated that the smell of the sewage interfered with his enjoyment of his yard, for which he is seeking compensation in the amount of \$450.00. The Tenant submitted a photograph of his yard shortly after a sink was emptied and a photograph of the yard when fluid has not recently been flushed into the field.

The Tenant stated that he has experienced problems with noise in the residential complex at various times during his tenancy and that the Landlord has not responded adequately to his concerns. He stated that the occupants of two sites regularly disturb him by playing loud music; that he has made several verbal complaints to the manager; that the manager has told him that the occupants are entitled to play music; that the Landlord may end the Tenant's tenancy if he continues to complain; that on April 27, 2012 he complained about the noise in writing; and that the Landlord has not responded to his written complaint.

Analysis

Every tenancy agreement contains an implied covenant of quiet enjoyment. It is always necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

On the basis of the information provided by the Tenant and in the absence of evidence to the contrary, I find that sometime during the middle of May of 2012 the Landlord exposed the Tenant's septic field in an effort to locate a water leak and that the septic

field remained exposed until July 16, 2012. While I accept that it may have been necessary to expose the septic field, I find that it interfered with the Tenant's right to the quiet enjoyment of his rental site, given the smell that is typically associated to sewage.

I find that the Tenant is entitled to compensation of \$100.00 for the two months his septic field was exposed. Given that the Tenant only paid \$300.00 per month for this site and the smell did not prevent him from occupying the site, I find that this is reasonable compensation for inconvenience he experienced.

A landlord is also obligated to take reasonable steps to protect a tenant's right to quiet enjoyment when their quiet enjoyment is being disturbed by another occupant of a manufactured home park. When a landlord becomes aware that a tenant is being disturbed by unreasonable noise from another site, a landlord is obligated to take reasonable steps to ensure the unreasonable disturbances do not continue.

In these circumstances, where the Landlord has not attended the hearing, it is difficult for me to ascertain whether the Landlord has taken appropriate actions to address the Tenant's noise complaints. In an attempt to resolve this conflict and to prevent further disputes between the Tenant and the Landlord, I order the Landlord to respond, in writing, to the Tenant's letter of April 27, 2012. In his written response to the Tenant I direct the Landlord to address the following issues:

- Outline the steps he has taken to investigate the noise complaint(s) he has received from the Tenant
- Explain whether he has been able to determine whether occupants of other sites are creating an unreasonable amounts of noise
- In the event he has determined that other occupants are being unreasonably noisy, explain the steps he has taken to prevent further noise disturbances.

The Tenant retains the right to file another Application for Dispute Resolution if his noise complaints remain unresolved.

I find that the Tenant's Application for Dispute resolution has merit and I find that he is entitled to recover the fee for his Application.

Conclusion

I find that the Tenant has established a monetary claim of \$150.00, which is comprised of \$100.00 for loss of quiet enjoyment and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution. I authorize the Tenant to reduce one rent payment by \$150.00 in full satisfaction of this monetary Order.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 21, 2012

Residential Tenancy Branch