Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Parkbridge Lifestyle Communities Inc. and Clayton, Williams and Sherwood Financial Group 87
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act*), regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

The tenant, council for the landlord, and representatives of the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

Council for the landlord advised me there was an error in the previous landlord's name. The parties did not raise any objections to the landlord's name being corrected and this has now been amended.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on January 01, 2011. Rent for this pad is now $841.00 which includes Hydro.

The tenant testifies that the park suffered from power failure on seven occasions between December, 2011 and August 2012. The tenant testifies that the power failure occurred within the park boundaries and therefore as the landlord was the registered bulk supplier of electricity to the park the landlord is responsible for these power failures. The tenant testifies that the power failures could have been averted if the park management had obeyed the directive of the BC Safety Authority and obtained electrical operating permits from the City. The tenant testifies that the terms of the City directive compel the park to conduct annual inspections of the electrical systems and to provide evidence of regular maintenance of the electrical system or the City will send in inspectors to do this and bill the park for the costs.

The tenant testifies that the landlord has not complied with this directive since 2006 and the park management were directed to apply for a permit from the electrical inspection department on December 04, 2011. The tenant testifies that the park management did not obtain this permit until March, 2012. The tenant testifies that at the time of the power failures the park was owned and operated by the second respondent named on the application. The current landlords did not take over the site until November, 2012.

The tenant testifies that they lost power to their home on December 03, 2011 for three hours thirty minutes. On December 04, 05, 15, and 19, 2011 the tenant testifies they lost power for three to four hours on each day. On December 20, 2011 the tenants lost

power between 9.30 a.m. and 7.30 p.m. On December 29, 2011 they lost power again for a few hours and on August 22, 2012 they lost power again for 11 hours.

The tenant testifies that during the December power outage the temperature was between zero and two degrees. The tenant testifies that on one occasion the park committee provided hot soup and coffee in the club house and on another occasion the landlord provided sandwiches for the tenants in the club house. The tenant testifies that the landlord did send the tenant some notices informing the tenants that the power would be out.

The tenant testifies that after receiving a notice about the power outage on December 22, 2011 the landlord agreed to provide generators for any tenants on oxygen. The tenant testifies that as his wife has to take medication that requires refrigeration the landlord did provide a generator to the tenants' home to run the fridge after a written request by the tenant. The tenant testifies that on that occasion the tenant also rented a generator for the rest of their home. The tenant seeks to recover the cost for this generator of $95.79 but agrees they have not provided a copy of the invoice in evidence.

The tenant testifies that due to a loss of power on four of these days the tenant and the tenant's wife had to eat out in restaurants. On one occasion this resulted in two meals out due to the length of time the tenants were without power on that day. The tenant seeks to recover the amount of $200.00 for the five occasions they ate out. The tenant agrees no receipts were kept or provided in evidence for these meals.

The tenant seeks to recover the amount of $500.00 for a loss of quiet enjoyment of their home as this should have been within the landlord's power to control if regular maintenance of the electrical system had been carried out.

Council for the landlords cross examines the tenant and asks numerous questions about the tenant receiving the memos from the landlord on dates relating to power

outages. The tenant responded to these questions by identifying the dates the tenant received memos about the power outages and information contained on the memos relating to the work being carried out on the electrical systems. Council for the landlords asks the tenant if the tenant agrees that if there was an electrical problem would the power need to be shut done in order to fix it. The tenant responds and states that if the landlord had done regular inspections of the system they may have found this problem. Council for the landlords states that the landlord had never been given any non compliance notices from the City or any notices that the landlord was contravening the bylaws. Council for the landlords asks the tenant about his testimony concerning the City doing the inspections if the landlord did not do them and states the City did not carry out any inspections.

Council for the landlords asks the tenant if the tenant has any evidence to show that even if the landlord had done an inspection would it have turned up this problem with the electrical system. The tenant responds that it is the law of probability that if something had been done the problem may have been found sooner. The tenant states that the new owner has outlined a 13 year plan to upgrade the system as the electrical system is at least 35 years old. Council for the landlords asks the tenant if the tenant is aware of any previous problems with the electrical system and did the landlord get appropriate representatives on site. The tenant responds that he does not know if there have been previous problems as his tenancy is relatively new. The tenant states that the landlord did call their contractors who were not licensed to deal with this problem so a licensed person could not be found until the following Monday. Council for the landlords asks the tenant is the landlord did everything they could to get the power back on. The tenant responds that the landlord did not bring in generators for all the tenants and left tenants in the cold. Council for the landlords questions the tenant on whether or not the tenant kept a record of the temperatures and if the tenant slept and eat in the home. The tenant responds that he did not keep records of the temperatures and they did sleep in their home but had to eat out for five meals as already stated.

Council for the landlords' states that it is there position that if the tenant is successful with this claim that it is the responsibility of the previous landlord and not the current landlord.

Council for the landlords asks the Community manager DL if he was previously employed by the first landlord. DL testifies that he was and he is now employed by the current landlord. Council for the landlord asks DL if Dl was aware of the power outage. DL responds that yes but it was not foreseen, there had been no previous outages and the landlord fixed the problem. The problem was caused by a failure of the power outage cable and this would not have shown up on an inspection. Council for the landlord asks DL if the landlord had a permit would the landlord have had to do annual inspections. DL responds that there is nothing specified as to what maintenance must be carried out.

The tenant raised an objection that at the time DL was not the manager of the site and would not have firsthand knowledge. DL testifies that as of August 12 he was the manager on site. When the power failed in August the company provided sandwiches for the tenants.

Council for the landlords asks the property administrator SW if SW has personal knowledge of the notices sent to the tenants. A discussion took place concerning these notices and when they were given to the tenants. Council for the landlords asks SW if the company was aware of the cause of the electrical problems. SW responds that the company was not aware until December 07, 2011 when it was indicated that the fault lay in the underground cable that was inaccessible, generators were provided for those affected tenants, the company did what they could to repair the fault and tenants were notified of what was happening through the memos and the office voice mail. Council for the landlord asks SW if the problem could have been foreseen in any way. SW responds No.

The tenant cross examines SW and asks SW if the memos were sent to each tenants home. SW responds that they hired someone to deliver the memos to each tenants home.

Council for the landlord asks the previous landlords representative JS if he was aware of any previous electrical problems on the site. JS responds that he has no knowledge of any previous problems and this problem could not have been foreseen but the company did everything possible to rectify the problem.

The tenant cross examines JS and asks JS if he has any evidence that the previous landlord did any maintenance to the electrical system. JS responds that they did everything a city inspector asked. The tenant asks if permits were only obtained for new home hook ups. JS responds that is correct.

The Arbitrator asks JS if they were ever told they had to obtain an annual operating permit. JS responds that they were never told they must obtain an annual operating permit but always obtained a permit when new homes were installed.

The tenant gives his closing statement and states that council for the landlords has spoken about the work the landlord did to give the tenants notices but the park did not protect the tenants right to quiet enjoyment of their homes when the power was shut off so the notices do not mean very much.

Council for the landlords gives their closing statement and states that the onus is on the tenant to provide evidence for example a receipt for the generator. The tenant asked for a generator and was given one by the landlord. The tenant has not provided receipts for restaurant meals and the landlord agreed to pay for meals if the tenant had provided receipts. Council for the landlords states that there was no interference to the tenants' use of the property and there must be substantial interference that renders a property unfit for occupation for compensation to be awarded for loss of quiet enjoyment however the tenants stayed in the home and slept in their home. Temporary discomfort

does not constitute a breach of quiet enjoyment. This was an emergency electrical issue that could not have been foreseen by the landlord at the time and may not have been found even if inspections had been carried out in the past.

Council for the landlords states the power was out for a total of 31 hours but the tenant only had to leave the home for five meals. Under the Safety Requirements Act there are no requirements for a landlord to do anything and the landlord has never had any citations or notices from the city concerning any safety issues with the power.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of all the parties. I will deal first with the tenants request to determine who has liability in this matter. When a problem has occurred during a tenancy and the site has been passed on to new landlords then the new landlords assume responsibility for any issues surrounding the tenancy. It is up to the previous owner to disclose any contentious issues at the time the new landlords takes over responsibility. If that has not been done or the previous landlords were not made aware of any future claims that may arise then it would be for the landlords to determine fault and not the tenant. A tenant can only bring the claim against the landlords as they exist today. Therefore I find the tenants claim will be addressed against the current landlords and any orders will be in the name of the current landlords only.

In determining the tenants claim to recover $200.00 for meals purchased and $95.79 for the hire of a generator; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

1. Proof that the damage or loss exists;
2. Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
4. Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I have considered the tenants claim for meals for $200.00 and to hire a generator for $95.79. The tenant has not provided any receipts to show that meals were purchased by the tenants to the cost of $200.00 or an invoice showing the cost to hire the generator therefore the tenant has not met part 3 of the test for damage or loss. Furthermore I am not wholly satisfied that the tenant has established that the tenants suffered these losses due to the landlords actions or neglect or that the landlords could have foreseen this electrical malfunction in order to prevent it. Therefore I am not satisfied that the tenant has met part 2 of the test. Consequently these sections of the tenants claim for damage or loss are dismissed.

With regards to the tenants claim for $500.00 for a loss of quite enjoyment, Council for the landlords is correct in his submissions that temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord’s actions that rendered the premises unfit for occupancy for the purposes for which they were leased or allows physical interference by an outside or external force which is within the landlord’s power to control. I am not

satisfied that the landlord could have foreseen this problem with the cable which was located underground or that even if annual inspections had taken place that this problem could have been detected due to the location of the cable therefore i find it unreasonable for the tenant to suggest that this was in the landlords control had the landlord obtained annual permits and conducted inspections and maintenance of the system.

However I must balance the tenant's right with the landlord's rights and responsibility to maintain the property and in doing so a tenant may be entitled to reimbursement for a 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.

Therefore I must determine if the value of the tenancy has been reduced by the seven periods of time that the tenants found themselves without power ranging from three to four hours on some days to 10nand 11 hours on other days. I find that the tenants were without power as agreed by the landlord but I find that the values for which their tenancy was reduced is limited in the time the tenants were unable to use the premises, and for the length of time over which the situation existed; of which six days occurred in December, 2011 and one day occurred in August, 2012. I further find the tenants were notified on all or most days when the landlords knew the power would be out and the tenants were kept informed of what work was being completed. Therefore it is my decision that the tenants suffered minimal disruption with the exception of December 20, 2011 when the tenants were without power for 10 hours, and I therefore limit their claim to the sum of **$200.00**.

As the tenant has been partial successful with this claim I find the tenant is entitled to recover the **$50.00** filing fee from the landlord.

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. No Monetary Order will be issued however I Order the tenant to deduct the amount of **$250.00** from the tenants next rent payment when it is due and payable to the landlord.

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

Dated: March 28, 2013

Residential Tenancy Branch