



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kamloops Riverview RV & Mobile Home Park
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, MNDC, RP, RR, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to dispute an additional rent increase; an order requiring the landlord to make repairs and reduce rent and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and his witness.

The tenant provided documentary evidence to confirm the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on March 25, 2013 in accordance with Section 89. As per Section 90, the documents are deemed received by the landlord on the 5th day after it was mailed.

Based on the evidence and testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel an additional rent increase to an order of requiring the landlord to make repairs; to a rent reduction for those incomplete repairs; to a monetary order for compensation; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 26, 36, 58, 60, and 65 of the *Manufactured Home Park Tenancy Act (Act)*.

Background and Evidence

The tenant testified that the tenancy began as a month to month tenancy in 2003 and has a current rent of \$347.00 due on the 1st of each month. The tenant submits that rent just went up to \$347.00 on April 1, 2013 as a result of a Notice of Rent Increase issued on November 30, 2012 increasing the rent from \$337.00, an increase of \$10.00.

The tenant submitted he was without water for nine days in January, 2013 from January 23rd to January 31st. The tenant was forced to eat and toilet elsewhere. The tenant submitted this was not the first time he has suffered from a loss of water. The tenant submits it happens yearly and the landlord has not repaired the problem despite repeated complaints. The tenant seeks permanent repairs to the existing system and the provision of a backup system to prevent water supply issues in future.

The tenant submits he could not prepare meals at home due to a lack of water for food preparation or washing dishes. The tenant claims increased gas mileage costs resulting from his requirement to go elsewhere to eat and for basic bathing needs.

The tenant submits that a year ago some of the tenants produced an agreement for the landlord and tenants to sign concerning all the repairs required in the park. The landlord returned this agreement with some amendments but never did sign the agreement.

The tenant seeks the following amounts for costs incurred:

- Meal costs - \$408.00 based on Revenue Canada Guidelines that stipulate \$51.00 per day for a period of eight days; and
- Fuel and mileage - \$57.82 also based on Revenue Canada Guidelines of \$0.495 per kilometre.

The tenant submits the landlord was ordered in a previous decision dated March 5, 2013 to establish and perform regular maintenance of the park including, cutting grass and weeds, clearing the snow regularly, sweeping the sand from the roads each spring, ensuring the tenants water supply is maintained as an essential service, and ensuring the surface of the roads are maintained to prevent cracking and torn asphalt; to inspect and remedy issues with drainage to resolve hazardous damage to the sides of the roads; to inspect and remedy any issues with the telephone poles and lines; to provide tenants with an emergency contact person and number either placed in a conspicuous place or given to the tenants in writing. However the tenant submits the landlord has only swept the roadway but no other work has started or been completed.

The tenant has provided photographs showing of the road entering the property. These photographs confirmed that the road is not maintained with drop in sections. The tenant testified that the landlord does not complete snow removal from the roads in the park in a timely or regular fashion. He submits that during heavy snowfall tenants must park their vehicles at the bottom of the hill. If there is a snowfall at night the landlord does not clear the snow until the next day preventing tenants from being able to reach their pad.

The tenant submits the landlord never sweeps the roadway in the spring with the exception of this spring after receiving the order from the previous hearing. The tenant submits there is insufficient drainage which causes erosion along the side of the roads.

The tenant submits emergency or after hours number contact information to reach the landlord or his agents has never been provided to the tenants.

The tenant submits the telephone poles throughout the park are unsafe. The tenant provided photographic evidence to show that some poles are tilting and rotten. The cable service providers have refused to climb the poles due to their condition.

The tenant has provided copies of e-mails requesting repairs, a copy of the agreement drawn up by the group of tenants (noted above) listing the repairs and the landlords response to this agreement.

The tenant seeks a rent reduction due to these ongoing issues until all the repairs are completed and the landlord starts to maintain the park.

Analysis

The landlord did not appear at the hearing to dispute the tenant's claims, therefore, in the absence of any evidence from the landlord, I have considered the tenants documentary evidence testimony as undisputed.

With regard to the tenant's claim to dispute an additional rent increase. The tenant provided a copy of a Notice of Rent Increase issued by the landlord on November 30, 2012 for a rent increase in the amount of \$10.00 raising the rent from \$337.00 to \$347.00 effective April 1, 2013. The tenant also provided a copy of another rent increase dated December 21, 2011 with an effective date of April 1, 2012.

Section 35 of the *Act* allows a landlord to raise the rent up to the amount calculated in the regulations and determined each year by the Residential Tenancy Branch. In 2013, the allowable rent increase is 3.8 percent. As per the information provided by the tenant I find the landlord raised the rent by 2.96% and as such I find the rent increase is allowable under Section 35 of the *Act*. I dismiss this portion of the tenant's Application.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I am satisfied with the evidence before me that the tenant was without water for nine days between January 23 and January 31, 2013. I also find this has been an ongoing problem which the landlord has failed to rectify and has been negligent by failing to provide a permanent solution to the water system problems. I find this failure is in contravention of the landlord's obligations under Section 26 of the *Act* to maintain the park in a reasonable state of repair.

I accept the tenant has suffered a financial loss as a result of the landlord's failure to comply with the Act. I also am satisfied the tenant has provided sufficient evidence to establish the value of that loss.

Section 26 of the *Act* requires a landlord to provide and maintain the manufactured home park in a state repair and complies with the health, safety and housing standards required by law.

I find the tenant has provided sufficient undisputed evidence to establish the landlord has failed to maintain the park in accordance with Section 26, specifically with regard to the ongoing water system problems, the telephone poles and wires and the drainage issues which causes damage to the roads.

I therefore ORDER the landlord to have the water systems inspected by qualified professionals and repaired to their specifications, including the installation of a backup system to ensure tenants have continuous water supply. I also ORDER the landlord to have all power and/or telephone poles inspected and to replace all poles that fail inspection. I ORDER the landlord to have the roadways in the park repaired to ensure all drainage issues are resolved.

I also find the tenant has provided sufficient undisputed evidence to establish the landlord has failed to maintain the park by cutting the grass and weeds regularly, to maintain the structure of the roads, ensure roads are cleared of snow on a regular and timely basis or sweep the sand on the roads away in the spring. I therefore ORDER the landlord to establish and practice regular park maintenance that includes, but is not limited to, grass and weed maintenance and road maintenance.

Section 27(2) of the *Act* which states a landlord must post and maintain in a conspicuous place in the manufactured home park, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

Based on the undisputed testimony of the tenant I find the landlord has failed to comply with Section 27(2) and I therefore ORDER the landlord to post an emergency contact name and number in a conspicuous place, or provide this information in writing to all of the tenants in the park.

In regard to the tenant's application to reduce rent for repairs, services and facilities agreed upon but not provided I find the tenant has provided sufficient evidence the landlord has failed to maintain the park or ensure a continuous source of water contrary to the *Act*.

Therefore I grant the tenant a \$125.00 per month rent reduction until such a time as the landlord completes the above noted orders and files an Application for Dispute

Resolution seeking and obtaining an order from an Arbitrator confirming that the orders have been completed.

I note if the landlord fails to prevent further interruptions in water supply the tenant remains at liberty to file an Application for Dispute Resolution seeking additional compensation.

Conclusion

In addition to the orders above, I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$515.82** comprised of \$465.82 compensation and the \$50.00 fee paid by the tenant for this application.

This decision and monetary order must be served on the landlord. If the landlord fails to comply with the monetary order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: April 22, 2013

Residential Tenancy Branch