



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Braun's Island RV Park
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, OLC, PSF, LRE, and FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to provide services that are required by law; for an Order requiring the Landlord to comply with the *Manufactured Home Park Tenancy Act*(Act) or the tenancy agreement; to allow the Tenant to reduce the rent for repairs, services, or facilities agreed upon but not provided; to suspend or set conditions on the Landlord's right to enter the site; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

The undisputed evidence is that water service has been restored to the rental unit, which is one of the essential elements of this dispute. As water service has been restored, I find there is no need to consider the application for an Order requiring the Landlord to provide services that are required by law.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make relevant submissions.

The female Tenant stated that on July 23, 2013 the Tenant mailed the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wished to rely upon as evidence to the Landlord. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch on July 24, 2013 and August 20, 2013. The female Tenant stated that copies of these documents were sent to the Landlord, by registered mail, on August 20, 2013. The Agent for the Landlord stated that he has been away on holidays for the past ten days; that he returned home one hour prior to the start of this hearing; and that he has not had the opportunity to check his mail. The Tenant was advised that I was inclined to adjourn the matter to provide the Landlord with the opportunity to retrieve this evidence, at which

point the female Tenant indicated that the Tenant wished to proceed without relying on this evidence. I therefore declined to consider these particular documents during these proceedings.

On August 15, 2013 the Landlord submitted documents to the Residential Tenancy Branch, copies of which were personally served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence on August 16, 2013 and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to financial compensation from the Landlord's failure to repair a plumbing leak and for communications between the parties in relation to that repair; is there a need to issue an order requiring the Landlord to comply with the *Act* or the tenancy agreement; and is there a need to suspend or set conditions on the Landlord's right to enter the site?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on December 01, 2010 and that the Tenant is renting a manufactured home park site for \$275.00 per month.

The Tenant submitted a written chronological sequence of events that outline the Tenant's version of events which occurred between July 16, 2013 and July 22, 2013. The relevant events included in this submission are:

- July 16, 2013
 - The water line under Tenant's home breaks.
 - The Tenant reports the problem to a representative for the Landlord at 3:36 p.m.
 - An agent for the Landlord by the name of Bryan shuts off the water line leading to the trailer and informs the Tenant that he can phone a plumber and bill the repair to the Landlord.
 - The Tenant calls a plumbing company with the initials "A.P." but is told they are unable to attend at that time, and will call when they have an opening.
 - The Tenant calls a plumber who attends the site and declares that he cannot repair the problem without authorization and that the Tenant must contact the Landlord for authorization.
- July 17, 2013
 - The Agent for the Landlord attends the site at 9:30 a.m. and goes under the manufactured home.
 - At 11:15 a.m. the Agent for the Landlord tells the female Tenant that the repair is complete and that the water has been turned back on.

- At 4:25 the male Tenant assumes the repairs are complete and he closes the skirting on the trailer.
- July 18, 2013
 - The Landlord arrives at the site, unannounced, at 2:45 p.m. He is angry that the Tenant called the plumbing company with the initials "A.P." The Landlord and the female Tenant exchange angry words and the Tenant is "scared for her life".
 - The Tenant realizes that the water has been turned off and the tool to turn it off/on is missing.
 - Approximately 40 minutes after their initial altercation the female locates the Landlord at the home he is building and she asks him to turn the water back on.
 - The Landlord tells her to leave his property or he will contact the police.
 - The female Tenant leaves his property and is "crying hysterically".
 - At approximately 5:30 p.m. the male Tenant goes to the Landlord's home and discusses the altercation between the Landlord and the female Tenant.
 - The Landlord tells the male Tenant to leave his property or he will contact the police.
 - The police attend but the Landlord is not ordered to turn the water back on.
- July 19, 2013
 - Tenant sends an email to the Landlord informing him that they still have no water, but gets no response
- July 20, 2013
 - Tenant sends an email to the Landlord and phones the Landlord to resolve the dispute and is told that the Tenant needs to call a plumber
 - Tenant contacts a plumbing company and makes arrangements to repair the leak
- July 21, 2013
 - A plumber hired by the Tenant repairs the water line
 - The Landlord delivers the tool for turning the line on/off to the site
 - Water service is restored to the home.
- July 22, 2013
 - Male Tenant stays home from work to prepare for dispute resolution proceeding.

The Landlord does not dispute the majority of events outlined in the aforementioned chronology of events, although he is uncertain of the precise dates of these events. He

stated that shortly after learning of the leak he told the male Tenant he would make a temporary repair to the line and that he did make a temporary repair to ensure the leak did not damage the site and that he did this as a "favor" to the Tenant. The Agent for the Landlord stated that he does not believe the Landlord was obligated to complete these repairs because they were under the manufactured home.

The Agent for the Landlord stated that he returned on Sunday and believed the repairs were complete, as the area had been "cleaned up". He stated that he subsequently learned that a plumbing company was coming to complete further repairs so he turned off the water and that he understands the plumber turned it back on a "couple of days" later.

The Witness for the Tenant #2 stated that he was at the rental unit on July 16, 2013 when he overheard an agent for the Landlord by the name of Bryan tell the Tenant that he can phone a plumber and bill the repair to the "trailer court". The Landlord stated that he has not specifically discussed this issue with Bryan, but he does not know why he would have said that.

The Tenant submitted a series of emails exchanged between the parties between July 18, 2013 and July 20, 2013.

In an email dated July 18, 2013 the Landlord declares that if there is a repair "before the shut off it is the park's responsibility to fix that repair, if there is a repair under the home beyond that shut off at the back of the home, it is the you, the homeowner's responsibility". The Landlord further declared that he is "happy that you are not comfortable with the temporary repair and have called a plumber to inspect it. If he is a qualified plumber he may complete the repair and turn the water back on".

In an email dated July 20, 2013 the Landlord clarifies that the Tenant is obligated to complete any repairs on the "home side of the shut off". He further declared that he was at the site the previous day and assumed the water had been turned back on and that the repair was complete, as the area had been cleaned up.

The Tenant submitted a copy of a letter from an individual who stated that he observed the altercation between the Landlord and the female Tenant on July 18, 2013 and, he believed the Landlord was being "very mean and forceful".

Witness #1 for the Tenant states that he is a licensed plumber; that he responded to a call for assistance from the Tenant on June 16, 2013; that he determined there was a water leak below the ground under the trailer; that he could not repair the leak because it was behind the shut off valve leading to the trailer; that the water had to be shut off by the Landlord before he could repair the leak; that he returned on July 21, 2013 and determined that the water had been shut off; that he determined that someone had attempted to repair the leak; that he repaired the leak properly; that the repair was a result of a mechanical failure of a plumbing fixture; that he obtained the "key" from the Landlord to turn the water back on; and that he turned the water back on.

The Tenant is seeking compensation for the emotional distress the female Tenant was under as a result of the Landlord's response to this incident. She stated that she experienced a "roller coaster of emotions"; that she was afraid the Landlord was going to return to the site and yell at her again; that she cried for 3 hours; and that she took time off work as a result of her emotional response to the incident.

The Tenants are both seeking compensation for lost wages arising out of this dispute. The female Tenant contends that she was unable to work because of emotional distress related to the altercation with the Landlord and the fact the water had been shut off to the rental unit. The male Tenant contends that he lost wages because he had to stay home because the female Tenant was afraid the Landlord would return to the rental unit; because he had to deal with having the plumbing repaired; and because he had to gather evidence to support the Application for Dispute Resolution.

Analysis

Section 26(1) of the *Act* stipulates that a landlord must provide and maintain the manufactured home park in a reasonable state of repair and in a manner that complies with housing, health and safety standards required by law. It is logical to conclude that this obligation includes providing potable water to a site in a manufactured home park.

One of the essential elements in dispute at these proceedings is whether the duty to repair a broken water supply pipe under the manufactured home rests with the Landlord or the Tenant. In my view, that depends on where the water supply line is broken. In my view it is logical to conclude that if the water supply line breaks between the shut off valve leading into the manufactured home and the manufactured home itself, the Tenant is responsible for repairing the line. Alternatively, if the water supply line breaks at any location before the shut off valve leading into the manufactured home, the Landlord is responsible for repairing the line, even if the break is beneath the manufactured home.

This finding appears to be somewhat consistent with the information provided by the Agent for the Landlord in the emails dated July 18, 2013 and July 20, 2013, when he declares that if there is a repair "before the shut off it is the park's responsibility to fix that repair, if there is a repair under the home beyond that shut off at the back of the home, it is the you, the homeowner's responsibility" and that the Tenant is obligated to complete any repairs on the "home side of the shut off". Clearly this is not the position the Landlord has taken however, as the Agent for the Landlord testified that he does not believe the Landlord is responsible for repairing any leaks under a manufactured home.

I find that the Landlord was obligated to repair the broken water supply line in these circumstances. In reaching this conclusion I was heavily influenced by the evidence of the plumber who completed the repair, who stated that the fault occurred behind the shut off valve leading to the trailer. This evidence convinces me that the water line broke before the shut off valve leading into the manufactured home and that the

Landlord is therefore responsible for repairing the line, even if the break is beneath the manufactured home.

In reaching this conclusion I was heavily influenced by the undisputed evidence that the water had to be shut off by the Landlord before the leak could be repaired. In my view, this clearly demonstrates that the leak occurred at a location on the water line that is under control of the Landlord and that the Landlord is therefore responsible for repairing the line.

The Tenant has not sought compensation for the cost of the plumbing repairs and I am, therefore, unable to award compensation for those costs at these proceedings. The Landlord and the Tenant should be aware of section 27(5) of the *Act*, however, which requires a landlord to reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord, and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed. To provide clarity to this dispute, there is no doubt that the plumbing repair constitutes an emergency repair and that the Landlord is obligated to pay for these repairs upon being provided with a proper written receipt for the repairs.

I am able to award the Tenant compensation for the loss of the quiet enjoyment of the rental unit as a result of the Landlord's failure to complete these repairs in a timely and responsible manner.

The undisputed evidence is that the Tenant was without water for several hours on July 16, 2013 and July 17, 2013. I find that the Landlord responded to the report of a water leak in a reasonably and timely manner in the first instance, and that the Landlord acted responsibly by providing a temporary repair. I therefore find that the Tenant is not entitled to compensation for being without water during this period.

I find that the Landlord did not act reasonably when the water was turned off on July 18, 2013 and was not turned on again until July 21, 2013. I find that the Landlord's failure to turn the water on and off in a responsible and timely manner was a significant breach of the Tenant's right to the quiet enjoyment of their rental site. While it is always difficult to grant compensation for breaches of this nature, I find that compensation of \$100.00 per day is reasonable compensation for being without water. I therefore award the Tenant compensation of \$400.00 for the four days they did not have full access to water in their home.

On the basis of the undisputed evidence, I find that the Landlord and the female Tenant had a loud, verbal altercation over this issue. On the basis of the testimony of both Tenant's and the written observations of a witness, I find that the Landlord was verbally aggressive and that the altercation significantly disturbed the female Tenant. I find that the Agent for the Landlord's behavior at the site on July 18, 2013 was unprofessional and that it interfered with the Tenant's right to the quiet enjoyment of the rental site. I grant the Tenant compensation, in the amount of \$100.00, for this breach.

I decline to award greater compensation for the verbal altercation as I find that the female Tenant contributed to the argument on July 18, 2013. In reaching this conclusion I was heavily influenced by the undisputed evidence that she also yelled at the Landlord on that date when he was at the site.

I also decline to award greater compensation for the verbal altercation because I find it hard to accept that the female Tenant was “scared for her life”, given that she went to the Landlord’s home, alone, a mere forty minutes after the initial confrontation.

I dismiss the claim for lost wages for the female Tenant. While I accept the female Tenant’s testimony that she missed work as a result of this incident, I find that this altercation, while unpleasant, was not such that the average person would have missed work as a result of it.

I dismiss the claim for lost wages for the male Tenant. I am not satisfied the Landlord’s behavior was such that the fear that he would return to the site to continue the argument was reasonable. There is no evidence to show that the Landlord intended to return to the site to continue the argument. To the contrary, the male and female Tenant both attended the Landlord’s home after the initial argument, which causes me to conclude that they were not particularly afraid of him. Therefore I do not find that the male Tenant need to miss work because there were reasonable grounds to believe that the Landlord would return to the site and argue with the female Tenant.

I am not satisfied that the male Tenant needed to miss work because he needed to deal with the plumbing repairs. Arranging for the repairs was limited to a few phone calls, which could have been made during work hours or a person acting on behalf of the Tenant. In my view there was no need to miss work as a result of the need to arrange repairs.

I am not satisfied that the male Tenant needed to miss work because he needed to prepare for these proceedings. Preparing for a dispute resolution proceeding is something that could have been done when the Tenant was not scheduled to work and neither the Landlord nor the Tenant is entitled to compensation for preparing for a dispute resolution proceeding.

I find that the Tenant’s Application for Dispute Resolution has merit and that the Tenant is entitled to compensation, in the amount of \$50.00, for the cost of filing this Application for Dispute Resolution.

In an attempt to provide clarity and harmony to the tenancy, I order the Landlord to strictly comply with section 23 of the *Act*, which outlines the Landlord’s right to enter the site.

Conclusion

The Tenant has established a monetary claim, in the amount of \$550.00, and I grant the Tenant a monetary Order for that amount. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

In the event the Landlord does not pay \$550.00 to the Tenant and the Tenant does not wish to file the monetary Order with the Province of British Columbia Small Claims Court, I authorize the Tenant to reduce the monthly rent payment by \$200.00 for two months and by \$150.00 by one month.

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

Dated: August 28, 2013

Residential Tenancy Branch

