Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Spectacle Lake Home Park (1989) Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, RP, PSF, RR, FF

Introduction

This hearing was attended to by all parties and dealt with several applications: for a monetary Order for recovery of the cost of repairs made by the tenant, an Order for the landlord to repair a septic tank, and Order for the landlord to prune and maintain trees and an Order for the landlord to maintain the driveway leading to the unit on a regular basis.

Issue(s) to be Decided

Is the landlord required to maintain the tenants' driveway?

Is the landlord required to reimburse the tenants for repairs to the driveway?

Is the landlord required to prune trees around the tenants' pad?

Is the landlord required to conduct further repairs to the septic tank?

Background and Evidence

Service of the application was admitted.

Tree Pruning:

During the hearing the landlord D.M. advised that she had retained an arborist to prune the trees in the park including those in proximity to the tenants' pad commencing on October 23, 2013. The applicants confirmed that this satisfied their present concerns. Accordingly I have dismissed the tenants' application to remediate the trees but permit them to reapply should the tenants believe that that the work does not satisfy the safety requirements of the Act.

Driveway Repair:

The tenants claim for recovery of the cost of driveway repairs. They testified that the tenancy began in October 2004 and that the pad they rented included a concrete driveway which was in disrepair. The condition continued to deteriorate whereupon the tenants testified that in April 2008 and June 2009 they requested the then landlord to repair it. Nothing was done. The tenants testified that in March 2010 and June 2011 they discussed this further with the current caretaker who responded that it was tenants' responsibility to repair the driveway. The tenants produced a letter dated November 14, 2011 addressed to the landlord's lawyer which they also delivered to the park office. In that letter the tenants advised the landlord that the cement parking pads were:

> cracked extensively and the cement parking pad is heaving (with height variations up to 4" in cement surfaces). The lease agreement provides for Park owners to supply "parking" to each site tenancy – a safe and stable parking pad is a reasonable expectation.

The tenants testified that they did not receive a reply to their letter. The tenants testified that in June of 2013 the condition of the driveway deteriorated to the point where it was a safety concern and the tenants decided to repair it at their own expense. During the process the landlord's manager D.M. came by acknowledged the repair, and reasserted that the tenants were responsible for such a repair. The tenants produced a letter dated June 24, 2013 in which they requested the landlord to reimburse them for the cost of the repair and a letter dated July 9, 2013 from D.M. for the landlord stating that repair of the pads or driveways was the tenants' responsibility and refusing to pay for any repair costs. The tenants submit that the driveway was to be provided by the landlord in the tenancy agreement, is a service in accordance with the Act and was unsafe. They submit that because the landlord refused to repair it they did so and now the landlord must compensate them. The tenants are claiming the sum of $ 382.78 for the repair comprised of $ 142.78 in materials and $ 240.00 in labour charged by the tenants at $ 20.00 per hour.

The landlord D.M. testified that the driveway is not a service provided by the landlord pursuant to paragraph B. 4. of the Park Rules which only includes power, telephone, septic and water as services. The landlord further submits that Paragraph E. 1. Of the Rules states that the tenant shall maintain the lot and that the driveway is part of the lot; therefore the tenants are responsible for the driveway under their tenancy agreement. The landlord further submitted that the concreting of the driveway was an improvement to the site by a previous tenant and that pursuant to section 26 (5) of the Act the landlord is not responsible to maintain it. Section 26 (5) of the Act states:

> (5) A landlord is not required to maintain or repair improvements made to a manufactured home site by a tenant occupying the site, or the assignee of the tenant, unless the obligation to do so is a term of their tenancy agreement.

The landlord submitted that the repair was not an emergency repair and therefore not one which the landlord was required to reimburse the tenants for. Finally the landlord testified that she had not known or received any notice that the tenants were intending to repair the driveway and therefore is not responsible for any cost of such a self-help measure.

Septic Tank:

The tenants testified that they discovered in 2013 that the septic tank lid was damaged by the landlord's employees in May of 2010. The landlord temporarily repaired it by placing a wooden frame around it. The tenants were not satisfied with that remedy, and called for an inspection by VIHA whose agent allegedly ordered the landlord to remediate that repair. The landlord placed a concrete lid on the tank, however the tenants claim the landlord made the repair in contravention of regulation 326 of the Septic System Regulations specifically that such repairs were not made by a certified septic technician. The tenants had not produced any such regulation prior to or at the hearing as they submitted those were in the public domain. The tenants admitted they were not concerned about the safety of the septic tank but they just required confirmation that the landlord used a certified technician. The tenants requested an Order requiring the landlord to use a certified septic technician to inspect and approve the repair.

The landlord D.M. referred to emails dated October 7, 2013 to the landlord and August 1, 2103 to the tenants from M.H. the VIHA Environment Health Officer stating that the temporary repair did not constitute a health hazard and that the landlord was planning a permanent repair. M.H. advised in his letters that VIHA was not able to Order the landlord to make further repairs unless there was a health hazard. The landlord submitted it was now repaired and is not a hazard. D.M. further testified that although none of her employees are certified septic technicians the landlord consulted an environmental Engineer during the repair process.

Analysis

Driveway Repair:

Section 1 of he Act provides the following definition:

"service or facility" includes any of the following that are **provided** or **agreed to be provided** by a landlord to the tenant of a manufactured home site:

(a) water, sewerage, electricity, lighting, **roadway** and other facilities;

(b) utilities and related services;

(c) garbage facilities and related services;

(d) laundry facilities;

(e) **parking** and storage areas;

(f) recreation facilities; (my emphasis added)

Paragraph F. #3 of the Park Rules and Regulations states that the

Tenant's vehicles are to be **parked** only in the **driveway provided.**

I find that the driveway is a roadway and a service which is to be **provided** by the landlord as prescribed by paragraph F. #3. of the Park Rules when interpreted with section 1 of the Act. I further find that the driveway is also a fixture and although it was "improved" by a former tenant who paved it with concrete, pursuant to the Policy Guideline 1: 1, 7, 9 it is the landlord's responsibility to maintain it. I find that section 26 (5) of the Act was not intended to apply to this situation.

Policy Guideline 1:

FENCES AND FIXTURES

A fixture is defined as a "thing which, although originally a movable chattel, is by reason of its annexation to, or association in use with land, regarded as a part of the land"

1. Chattels, such as brick, stone and plaster placed on the walls of a building, become realty after annexation. In other words, where personal property does not retain its original character after it is annexed to the realty or becomes an integral part of the realty, or is immovable without practically destroying the personal property, or if all or a part of it is essential to support the structure to which it is attached then it is a fixture.

7. If the tenant leaves a fixture on the residential premises or property that the landlord has agreed he or she could erect, and the landlord no longer wishes the fixture to remain, the landlord is responsible for the cost of removal, unless there is an agreement to the contrary.

9. **If the tenant leaves a fixture on the residential premises or property at the end of the tenancy, and the landlord does not remove it prior to the commencement of the following tenancy, the landlord is responsible for future repairs**, unless the fixture only remains because the in-coming tenant agreed to maintain it, in which case it

> may be found that the ownership of the fixture passes to the in-coming tenant. (my emphasis added)

I find that notwithstanding that the disrepair of the driveway predated this tenancy or that the tenants knew of the disrepair at the commencement of their tenancy that the landlord is responsible to maintain the driveway which is an essential part of the Park or services pursuant to section 26 (1) and (6) of the Act.

Landlord and tenant obligations to repair and maintain

> **26** (1) A landlord must
>
> > (a) provide and maintain the manufactured home park in a reasonable state of repair, and
> >
> > (b) comply with housing, health and safety standards required by law.
>
> (6) A landlord's obligations under subsection (1) (b) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I accept the tenants' testimony and photos regarding the disrepair and safety hazards occasioned by the disrepair of the driveway. I further find that the tenants made reasonable efforts to request that the landlord make repairs dating back to 2008 and continuing through 2011. I accept the tenants' testimony that each time the landlord or its agent refused to accept responsibility for the repairs. I reject the landlord's submission that she had no knowledge that the tenants intended to make their own repairs because the landlord is bound by the knowledge of her employees or agents, inherits the same state of affairs from the previous landlord and because the landlord in her own letter dated July 9, 2013 clearly acknowledges that the landlord did not believe she was ever responsible for the maintenance of the driveway. I find that it is reasonably foreseeable that the tenants will make their own repairs to the driveway if the landlord refuses to do the same. I find that the amount claimed by the tenants for their repairs is reasonable and pursuant to sections 60 and 65 of the Act I Order that the landlord pay them the sum of $ 382.78. I further Order that the landlord shall henceforth maintain the driveway on a regular basis.

Septic Tank:

The tenants admit that they are not concerned about their health and safety as a result of the septic tank repair but rather request an Order compelling the landlord to certify that a qualified technician completed the repair. I find that such relief is beyond the scope or intent of this Act and accordingly I have dismissed it. If the tenants are able to reframe an application to request relief that is provided under the Act regarding their septic tank then they may reapply accordingly.

The tenants have also claimed for compensation for their time and expenses incurred in preparing for this application. Such time and expenses are usually borne by an applicant as part of the ordinary course of making an application. I have therefore dismissed all of those claims.

Conclusion

The tenants have proven a claim of $ 382.78. I Order that they recover their filing fee amounting to $ 50.00 and grant them a Monetary Order totalling $ 432.78. I direct and permit the tenants to deduct this sum from their next rental payment. I have dismissed their claim regarding the septic tank and tree pruning with liberty to reapply and dismissed all their other claims.

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: October 22, 2013

Residential Tenancy Branch