Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1043181 ALBERTA LTD., SHUSWAP COUNTRY ESTATES and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC RP O FF

Introduction

This hearing convened on October 16, 2013 for sixty minutes and reconvened on December 16, 2013 for forty one minutes. The hearing dealt with an Application for Dispute Resolution filed on September 3, 2013, by the Tenants to obtain Orders for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to make repairs to the unit, site or property, for other reasons, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Tenants be granted a Monetary Order?
2. Should the Landlord be ordered to repair the unit, site, or property?

Background and Evidence

The parties confirmed that on August 27, 2008 they entered into a written manufactured home park tenancy agreement and the Tenants moved onto the site in October 2008. Pad rental began at $275.00 per month, was subsequently increased to $285.00, and will be increased again to $290.00 effective January 1, 2014.

The Tenant testified that he is seeking $5,000.00 for compensation for reimbursements of $336.00 he paid for a home inspection report; $632.77 in legal fees; their time in having to continuously request repairs and monitor the Landlord's progress; the loss of quiet enjoyment during construction; and loss of quiet enjoyment due to ongoing water erosion and intrusion problems.

The Tenant pointed to his evidence which included a chronological list of events. He argued that he has had numerous discussions with the Landlord about his concerns of flooding and water drainage problems. In June 2011 the Landlord finally acknowledged the problems but always stalled taking action to resolve them. They have set numerous deadlines for work to be done but this simply causes more work for him to track down the Landlord because they miss every deadline. After numerous failed attempts they decided to obtain an inspection report and hire a lawyer to assist in getting action. The Tenant said when they heard some work was being done they decided to stall the legal action but unfortunately the Landlord stopped doing the work once they relaxed with the legal input.

The Tenant submitted that damage was caused to his property during the repairs. His underground water system / sprinklers were removed and two decorative trees were removed and never replaced.

The Tenant argued that the problems have gone on so long that there are signs of ground erosion, damage to the interior of his manufactured home ceiling appeared in April 2012, water intrusion problems on his site, his exterior lattice work has shifted and broken away from his home, and most recently he has evidence that his home has shifted or sank and is no longer level. He hired a home inspector to provide a written report as supporting evidence. The report clearly indicates where the water intrusion is coming from.

The Landlord testified and confirmed that there has been some work done to attempt to repair the water intrusion and erosion issues. There were two trees removed that were worth only $20.00 each and they were not put back because the Tenant told her he wanted to use that area as extra parking. The crew did remove a water hose, which they think may have contributed to the water, but it was simply a black hose that was cracked and taped and they simply rolled it up and placed it on the Tenant's deck. She was of the opinion that the watering hose was not a necessity for the gravelled yard and that is why they did not replace it. She noted that the Tenant had previously refused to provide them with a copy of his building report. The first time she saw it was when she received a copy of his evidence for this hearing.

The Landlord admitted that there were water problems at one point, but they felt they dealt with them by having the garage next door install eaves troughs and two drains. She also acknowledged that there is water running down the other side of the road but that they diverted the water in that direction and away from the Tenants' lot.

The Landlord confirmed that when they purchased this manufactured home park phase one, which is located at the bottom of the hill, was already completed. They have been developing the property up hill, have completed phase two, and are working on phase three which is higher up the hill.

Just prior to the expiration of the hearing time the Landlord stated that they are in the process of developing this park and are caught up in a soft real estate market which is causing financial issues. She would like to put this entire issue off until spring and until after the snow melts so they can monitor how the snow run off will affect the situation.

At this time the October 17, 2013, hearing was about to expire and I advised both parties that we would be reconvening to a future date. I issued the Landlord the following oral order:

> The Landlord is hereby required to commission a written report from a person licensed in the Province of BC to survey the manufactured home park property and licensed to make recommendations on current water drainage, intrusions, and erosion problems affecting site # 27. This report must be commissioned forthwith and a copy provided to the Residential Tenancy Branch and the Tenant prior to the reconvened hearing.
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The hearing reconvened on December 16, 2013, for 42 minutes. The Tenant confirmed receipt of the Landlord's cover letter requesting an adjournment, and a report dated December 9, 2013 from a licensed engineer who had inspected the property and the Tenants' home on November 29, 2013. The Landlord apologized for the delay in having the report completed stating that the engineer works in a small town. I informed the parties that I would not be adjourning this matter and I proceeded to hear from both parties.

The Landlord testified that the engineer inspected the property on November 29, 2013, and as per his letter, he did not see any signs of water. He mentioned the two drains that were installed on November 9, 2012, which appeared to be working properly. He noted that there was no current run off and that he had been hired to return in March 2014 to reassess the area. He indicates that part of the problem came from the Tenants' underground irrigation system.

The Landlord clarified that it was March 23, 2013 when the large rocks were brought in to level the property and it was May 10, 2013 when the landscaping was finished in the lot next to the Tenants. The drainage on the other side of the road was completed in 2013.

The Landlord argued that the Tenant was seeking compensation for loss of quiet enjoyment which resulted from work that was being done across the road, outside of the manufactured home park. She clarified that her company owns additional property, outside of the park where they had a supply of large rocks stored. The rocks were crushed and hauled away from 2010 to May 2012. This is also the location which has storage of vehicles and R.V.'s.; and is not part of the manufactured home park.

The Tenant testified and confirmed that his building inspection was conducted on October 22, 2012 and not July 2013. He clarified that the report is accessed on-line with special log-in information. He had lost the original log in information which was re-issued to him in July 2013. When he accessed the website in July 2013 to print the report for this package it changed the date on the report. He stated that he could confirm the repair work on his lot was completed after his inspection report but he could not say when the French drains were installed.

The Tenant advised that they leave the country each year during the month of October and return in approximately April of each year. He summarized that the first time he brought his concerns to the Landlord about drainage problems was in June 2011, his building inspection was October 22, 2012, and the work that was done on his lot and the neighbouring lot ended in May 2013. He argued that there was a pool of water under his trailer on October 3, 2013, one year after the French drains were installed, which indicates the drainage issue has not been resolved.

The Tenant stated that he spoke with the engineer who conducted the November 29, 2013 inspection. The engineer explained what a French drain was so he now has a better understanding of that type of drain. He argued that when the engineer inspected the property on November 29, 2013, the ground was frozen and topped with snow. He is of the opinion that if the follow-up assessment is conducted in March 2014 the ground will still be frozen and the water will not be flowing.

The Tenant disputed the assertion that the water issue was caused by their underground irrigation system. He indicated that their system is not plumbed directly to the water supply; rather, they must manually attach it to the garden hose tap and turn

the tap on and off each time they water. They do not leave this tap turned on; therefore, the water is not coming from their drainage system.

The Tenant stated that he could not recall the exact words from his conversation with the Landlord about the spare lot. He said he recalls the Landlord asking how they would like it finished off and that he said something like “just replace the rock and we’ll make it a parking lot”.

In closing, the Landlord reiterated that there has been no rock loading in 2013. Also, the black irrigation pipe that was removed was cracked and the previous owner had placed some tape on the crack which is why they believe the water may have come from that pipe.

The Tenant stated that he stands by everything that is written in their documentary evidence and specifically the statement marked as enclosure #5.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 60 of the *Manufactured Home Park Tenancy Act.*

After careful consideration of the aforementioned, the documentary evidence before me and on a balance of probabilities I find as follows:

The following was not in dispute: (1) there had been past drainage issues which caused water egress problems to the Tenants’ site which were reported to the Landlord in June 2011; (2) the Landlord delayed or stalled with initiating repairs until 2012; (3) the Tenant had an inspection of the property completed October 22, 2012; (4) the Tenants sought legal advice after the inspection and when they heard reports of work being done they ceased their legal actions in November 2012; and (5) the Landlord conducted some repairs which ceased in May of 2013.

The Tenants returned to their home in April 2013 and after a heavy rain in June 2013, they saw evidence of continued problems with the drainage. They reported their concerns to the Landlord again on July 9, 2013. The Landlord continued to put off their requests so they filed their claim for dispute resolution.

What is in dispute is the cause or source of the water; and whether the problem has been fully remediated. The Tenants argued that their irrigation system could not be the cause as it is manually turned off and on when being used. Furthermore, the system was partially removed by the Landlord in the spring of 2013 and they have evidence of a pool of water under the home as late as October 2, 2013.

The Tenant testified that he is seeking $5,000.00 for compensation for reimbursements of $336.00 he paid for the home inspection report; $632.77 in legal fees; their time in having to continuously request repairs; the loss of quiet enjoyment during hauling of rocks for the highway construction and looking at unsightly storage; and loss of quiet enjoyment due to ongoing water erosion and intrusion problems which has caused a crack in their ceiling and has shifted their home.

Section 26 of the Act stipulates that 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.

Section 27(1)(b) of the Act stipulates that emergency repairs means necessary for the health or safety of anyone or for the preservation or use of property in the manufactured home park.

Despite being informed of the water egress problems back in June 2011, the Landlord failed to respond to the Tenants' concerns until after the Tenants commissioned the building inspection and sought legal assistance. Having to acquire the building report as evidence to prove the property was not in a reasonable state of repair, caused the Tenants to suffer a loss of $336.00. Accordingly, I find the Tenants have met the burden of proof for damages and I award them **$336.00.**

In relation to legal fees, I find that the Tenants have chosen to incur legal costs that cannot be assumed by the Landlord. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act, not by a choice to obtain legal representation. I note that *Black's Law Dictionary, sixth edition*, defines costs, in part, as:

> *A pecuniary allowance....Generally "costs" do not include attorney fees unless such fees are by a statute denominated costs or are by statute allowed to be recovered as costs in the case.*

Therefore, I find that the Tenants may not claim legal fees, as they are costs which are not denominated, or named, by the *Manufactured Home Park Tenancy Act.* Accordingly, the claim for $632.77 in legal fees is dismissed, without leave to reapply.

The Tenants have sought compensation for their time spent meeting with the Landlord and following up on promised repair dates. The Act provides landlords and tenants the opportunity to resolve issues through the dispute resolution process. Therefore, I find the Tenants made a personal choice to handle their situation by tracking or following up with due dates with the Landlord on their own, instead of bringing the issue to dispute resolution to obtain orders for repair sooner. Furthermore, the Act does not govern contracts of service; therefore, I find there is insufficient evidence to prove entitlement to compensation for the Tenants' time spent managing this situation.

The corporate Landlord owns the manufactured home park and the property across the road. The Tenant is seeking compensation for loss of quiet enjoyment related to unsightly storage and construction / rock work which has been done on the property across the road.

Despite owning both properties, I find the corporation's actions or work on the property across from the manufactured home park are not related to their obligations as a landlord as required under the act. Therefore, I find I do not have jurisdiction in the matters pertaining to noise complaints or storage on the property across the road from the manufactured home park. Therefore, that portion of this claim is dismissed, without leave to reapply. The Tenants are at liberty to seek a remedy through the proper authority governing noise or storage on private property.

Section 22 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the Landlord to make the rental site suitable for occupation; which warrants that the Landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the property would deteriorate occupant comfort and the long term condition of the site and or manufactured home.

Residential Tenancy Policy Guideline 6 stipulates that "it is 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."

I find it undeniable that given the Landlord(s) continued stalling tactics that the tenants have suffered, and will continue to suffer, a loss of quiet enjoyment, until the water egress situation is fully resolved, and therefore, a subsequent loss in the value of the tenancy for that period. As a result, I find the Tenants are entitled to compensation for that loss.

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the

situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

As such, I make note that the problem was first reported back in June 2011 and some work was performed which ceased in May 2013. The Landlord was notified of further concerns on July 9, 2013, and a pool of water was present in October 2013.

I note the Tenants do not reside in the manufactured home park during the six months of winter which is when the ground is frozen and when water egress is not an issue. There was only a short period of time when construction was being performed on their site after they returned home in April 2013, which would have negatively affected their use of their manufactured home park site. That being said, they have had the worry of problems during rainy periods from June 2011 to approximately November 2012, and when the ground thawed in approximately April 2013 to November 2013. Accordingly, I find they suffered a loss of quiet enjoyment due to that worry for the previously noted 14 months.

Section 60 of the Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the above I find the Landlord breached sections 26 and 22 by failing to take action in a timely manner to rectify the water egress problem. Accordingly, I award the Tenants monetary compensation in the amount which is equal to 15% of their rent for fourteen months for a total of **$598.50** (15% of $285.00 x 14).

As noted above, I have found the Tenants will continue to suffer a loss of quiet enjoyment until such time as the water egress problem is fully remediated. Accordingly, I order the Tenants to reduce their monthly rent payments by 15% beginning April 1, 2014 and continuing until such time as the water egress remediation has been completed. For clarity, the Tenants' rent will be increased to $290.00 effective January 1, 2014, therefore they are ordered to reduce their rent by 15% or $43.50 and pay **$246.50** ($290.00 – $43.50) beginning April 1, 2014.

Upon review of the Engineer's letter, I find there to be insufficient evidence to support the Landlord's allegation that the water egress was caused solely by the Tenants' irrigation system. I make this finding in part because the Tenant affirmed that the

system did not have a constant feed of water, meaning it was turned on and off after each use. Furthermore, the engineer references the building inspection report; however, there was no mention of the irrigation system in the building inspection report that was before me and the photos do not indicate the irrigation system was at fault. The engineer did not inspect the property until November 29th, 2013, after the ground was frozen and after the cracked irrigation hose had been removed in April 2013. Also, the evidence supports there was a pool of water under the manufactured home in October 2013, prior to the ground freezing and prior to the engineer's inspection.

The engineer has been retained by the Landlord to conduct a second inspection in March 2014; however, the Tenant asserts that the ground will still be frozen at that time. I accept the Tenant's assertion that the ground may not be fully thawed by March 2014 as average night time temperatures in March for that region are normally below freezing, which would inhibit the engineer's ability to see the full effect of the flow from the snow melting and water runoff. Accordingly, I order that the Landlord reschedule the engineer's inspection to be performed during the **last week of April 2014.** I further order the Landlord to provide a copy of the engineer's written report to the Tenant no later than May 15, 2014 and remediate or repair all water egress issues no later than **June 30, 2014.**

The undisputed testimony supports the black irrigation hose which was removed from the ground was cracked and left for the Tenants. Furthermore, there is evidence that that Tenants told the Landlords to replace the gravel and make the space a parking lot; without mentioning compensation for the two trees. Accordingly, I find there to be insufficient evidence to support a claim for compensation for the hose and for the trees; and those claims are hereby dismissed, without leave to reapply.

The evidence suggests that the Tenants' manufactured home has shifted causing it to become unlevel as a result of the soil erosion. Accordingly, I order the Landlord to have the Tenants' manufactured home leveled immediately upon completion of the remediation of the water egress issues.

The Tenant alleged that their manufactured home has or will continue to suffer damage as a result of it shifting and becoming unlevel. I find there is insufficient evidence before me to support that there has been damage or to support the value of said damage. Accordingly, I dismiss the claim for compensation for damage to the manufactured home, with leave to reapply.

The Tenants have primarily been successful with their application; therefore I award recovery of the **$50.00** filing fee

Conclusion

The Tenants have been awarded monetary compensation in the amount of **$984.50** ($336.00 + 598.50 + $50.00), pursuant to section 60 of the Act. The Tenants may deduct this amount from future rent payments “or” they may choose to serve the enclosed Order upon the Landlords to collect payment.

In addition to the above monetary award, I HEREBY Order the Tenants to reduce their monthly rent payments by 15% and pay **$246.50** per month, beginning April 1, 2014, pursuant to section 55 of the Act. The reduced rent will stay in effect until such time as the Landlord has made application for dispute resolution to prove the water egress remediation has been completed and the Landlord has been granted an Order to have the rent returned to the full amount of $290.00.

The Landlord is HEREBY Ordered to reschedule the engineer’s inspection to the last week of April 2014; provide a copy of the engineer’s written report to the Tenant; remediate all water egress issues; and level the Tenants’ home as ordered above, pursuant to section 55 of the Act.

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: December 17, 2013

Residential Tenancy Branch