

Dispute Resolution Services

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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

<u>Dispute Codes</u> MNDC, OLC, RP, PSF, RR, FF

Introduction

This is a Review Hearing granted where the Tenant seeks a monetary order for money owed or compensation for damage or loss, an order for the Landlord to comply with the Act, Regulation or Tenancy Agreement, an order for the Landlord to make repairs to the unit, site or property, an order for the Landlord to provide services or facilities agreed upon, an order allowing the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

On December 20, 2013 the conference call hearing was adjourned due to a lack of time to March 13, 2014. The hearing was reconvened and completed on March 13, 2014 with both parties providing testimony.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to maintain the tenant's driveway?

Is the tenant entitled to a monetary order for the cost of repairs to the driveway? Is the tenant entitled to an order requiring the landlord to prune trees? Is the tenant entitled to an order requiring repairs to the septic tank?

Background and Evidence

The Tenant seeks a monetary claim of \$419.95 which consists of \$142.78 recovery of driveway repair costs, \$240.00 for labour 12 hours at \$20.00 per hour to repair the driveway and \$37.17 to recover costs of photocopying documents for the dispute.

The Tenant also seeks an order for repairs for septic issues. The Tenant states that the septic system is not functioning and flushing properly. The Landlord states that prior to this hearing that the Tenant has never notified the Landlord about this issue. The Landlord states that they will have an employee attend the site to inspect the septic problem. If necessary, Landlord will then have a technician attend to inspect and repair it. The applicants confirmed that this satisfied their concerns on this issue. As such, I have dismissed the tenant's application regarding the septic system, but permit them to reapply should the tenant's feel that the issue was not resolved to their satisfaction.

The Tenant seeks an order for the Landlord to re-surface the driveway as the tenant has already completed interim repairs to fill in all of the cracks under secton 26 of the Manufactured Home Park Tenancy Act which states, "A landlord must provide and maintain the manufactured home park in a reasonable state or repair, and comply with housing, health and safety standards required by law." The Tenant states that the driveway has deteriorated with 4 inch drops and that the Landlord was repeatedly notified to remedy this issue. The Tenant states that he was informed by the Landlord that the driveway cracks were not a safety issue and that resurfacing the driveway was the Tenant's own responsibility as that is an esthetic issue. The Tenant relies on photographs of the completed repairs that were made by the Tenant. The Landlord disputes this claim stating that this is not a safety issue, but one of esthetics. The Landlord also states that under section 27 of the Act that "emergency repairs" means, "repairs that are urgent, necessary for the health of safety of anyone or for the preservation or use of property in the manufactured home park,". The Landlord states that based upon the provided photographs that the driveway is clearly usable and that cracks in the driveway do not require urgent, necessary repair for health or safety issues. The Landlord also states that the Tenant by making the crack repairs himself has failed to comply with section 27 (3) of the Act. The tenant stated that there were only limited photographs of the cracked and damaged driveway prior to his repairs.

The Tenant also seeks an order for the Landlord to trim the trees (already partially trimmed and seeks completion) as shown by the tenants photographs F4 to F11 in compliance with the British Columbia "Firesmart Manual" standards as outlined on page 3 of the manual. The Tenant states that there are trees less than 3-6 meters where the crowns of individual trees overlap and that some of them need to be removed. The Landlord disputes this claim stating that an arborist was retained to prune the trees in the park including those in proximity to the tenant's pad. The Tenant disputes that the pruning was not adequate for safety concerns. The Landlord disputes this referring to a letter dated November 8, 2013 provided by the arborist which states, "with regards to Spectacle Lake Home Park, located at... Eager Beaver Tree Service has been maintaining + inspecting the trees in and around the park 2 to 3 times each year for 20

years. The most recent inspection was in October of 2013, at that time several trees were found to be unsafe and were removed at this time all trees have been inspected and found to be safe. There is a hedge at the entrance to c section that has spider mite and should recover, however it is not a hazard." Another letter from Eager Beaver Tree Services dated December 9, 2013 which states, "Other work requested by tenant was considered and determined unnecessary by a certified arborist. This was explained to the tenant on site, at the time of work being done. The arborist which was on site at the time, is a certified risk assessor (Trace) and also is ISA certified arborist..."

Analysis

On the tenant's issue of driveway repair, I find that the landlord is responsible for maintenance of the driveway. Section 1 of the Manufactured Home Park Act provides a 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

As well, Paragraph F #3 of the Park Rules and Regulations state that the

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

I find that the driveway is a fixture of the property and provided to the tenant with the rental property and as such the landlord is responsible for maintaining it. However, the tenant has failed to show that after his patching repairs how the landlord would need to re-surface the driveway for the purposes of emergency repairs. I find based upon the evidence of both parties that there no emergency required and that the driveway is functional and usable with no safety concerns. The tenant's claim to have the landlord re-surface the driveway is dismissed, however the landlord is responsible for maintaining the driveway in the future.

I accept the evidence of the Tenant over that of the Landlord that the driveway was in disrepair and that the Landlord is responsible for the maintenance of the driveway. Based upon the evidence of the Tenant that repeated requests notifying the Landlord to make repairs dating as far back as 2008 and continued until 2011, I find that the Tenant did make reasonable efforts to have the Landlord repair the driveway. The Landlord responded throughout that the responsibility for the maintenance of the driveway was that of the Tenants because they were esthetic. I find that Section 27 (3) of the Act does not apply, as it reasonable to see that repairs to the driveway would be made by the Tenant if the Landlord refused as it is in this case. Having 4 inch deep cracks could pose a threat of damage to the tenant's property (vehicle). The landlord had opportunity to rectify the issue and did not, nor did the landlord assert themselves to takeover the duty of repairing the driveway from the tenant. I find that the costs incurred by the Tenant of \$142.78 for materials and \$240.00 for labour to affect driveway repairs patching as reasonable and award them to the Tenant. The Tenant has established a monetary claim of \$382.78.

Section 72 of the Act addresses **Director's orders: fees and monetary order.** With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Tenant's claim for recovery of litigation costs (photocopying \$37.17) is dismissed.

On the tenant's issue of tree pruning, I find that the tenant has failed to establish a claim. The tenant has provided a document titled, "The Home Owners FireSmart Manual" in support of his claim that the surround trees do not meet "FireSmart" standards. The landlord states that a certified arborist was hired, who is also a certified risk assessor as shown in the landlord's documentary evidence of a letter submitted from Eager Beaver Tree Service. The letter provided by the arborist shows that a recent inspection took place in October of 2013 and has been doing so for approximately 20 years, 2 to 3 times a year in which no hazards were determined. On this basis and without conflicting evidence, I defer to the expertise of the certified arborist/risk assessor that no hazards are posed and that the tenant's application for tree pruning is dismissed.

Conclusion

The tenant has established a monetary claim for \$382.78. The tenant is also entitled to recovery of the \$50.00 filing fee. I grant to the tenant a monetary order for \$432.78. The landlord is found to be responsible for the maintenance of the driveway.

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 3, 2013

Residential Tenancy Branch