Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Crest Group Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, PSF, RR, FF

Introduction
This hearing dealt with an application by the tenant for a monetary order; orders compelling the landlord to comply with the Act, regulation or tenancy agreement; and to provide services required by law; and an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The tenant did not appear at the hearing but was represented by two agents. He had filed written material in advance of the hearing. The landlord had not filed any written material in advance of the hearing but said she was prepared to proceed.

Issue(s) to be Decided

- Should the tenant be granted a monetary order, including a rent reduction, and if so, in what amount?
- Should any other order be made against the landlord and, if so, on what terms?

Background and Evidence
The tenant rents a pad in a manufactured home park. His tenancy commenced in May of 2013. There does not appear to be written tenancy agreement. The monthly rent is $400.00.

The same family has owned this park for almost 50 years. After the death of the parents management of the park has been taken over by the children. A daughter appeared on behalf of the landlord at this hearing.

The park was originally built as a campground; over the years it has evolved into a manufactured home park. There are 71 sites in this park. The tenants are all seniors and many are quite elderly. Many of the tenants have lived in this park for decades. Most of the units have only one resident. Many of the tenants are “snowbirds” who only live in this park for the summer months.

At one point in the past the park had a facility called the “rec room”. This was used by the owners’ family and the park residents. It was closed about thirty years ago. The space was then used for storage until 2011.

The landlord testified that in 2011 she thought it would be nice to recreate the space. The landlord installed a new fireplace, new appliances, fixed up the bathroom, cleaned and painted it. The landlord also equipped it with kitchen utensils and some other necessities.

In December 2011 the landlord sent out a notice announcing the opening of the “Social Club”:

The response to the facility was underwhelming. A weekly card club met from September to June. According to the landlord this group was usually six to eight people.

A dance group also met weekly during the winter months. The landlord testified that this was not a club but dance lessons provided by a park resident. He charged a fee for the lessons and most of his students did not live in the park.

At first the landlord charged the card group and the dance group $1.00 per person for use of the facility. This was later changed to a flat fee of $25.00 per event. No security or cleaning deposit was required.

Other than these two organized groups the hall was only occasionally used by other groups.

One of the groups that used the facility was a homeowners group that was formed in 2013 in response to the landlord’s application for an additional rent increase. The rented the social club for their founding meeting in the fall of 2013.

The group successfully opposed the landlord’s application. The Residential Tenancy Branch decision was upheld on judicial review. According to the tenant’s written submission 26 tenants belong to this group.

The group hosted two pot luck suppers in the spring and summer of 2014. About half of the park residents attended and the witnesses described the events as successful.

The homeowners group booked the hall for a meeting scheduled for July 17. Two days before the meeting a notice was placed on the door of the Social Club stating that it was closed until further notice.

The homeowners association had to arrange for an alternate place and time for their meeting. No information was presented on the cost of the alternate location.

The homeowners association made some inquiries about the status of the facility. On August 7 they received an e-mail from park maintenance personnel that: “Due to financial restraints at this time the owners have advised me that we will not be doing the needed repairs to the social club. At this time I am unable to give you any time frame for the repairs and re-opening of the social club. I will keep you advised of any changes.”

In response to a follow-up inquiry the same maintenance person advised on September 26 that: “I have talked to the owners and have been told that the social club will not be reopened.”

The association hosted a BBQ in the fall. It was held outside in an area adjacent to the Social Club. One of the organizers testified that the event was held with the agreement of the landlord.

The homeowners association tried to host a Christmas pot luck dinner at a nearby church. The organizers sent out RSVP invitations but only five residents expressed an interest in attending. The cost of this function was going to be higher than previous events because the cost for the church was more than $50.00.

The tenants filed this application and at least one other similar application on December 15.

The landlord testified the facility was closed in July because of sewage backup. It took two months before their contractor found that someone had stuffed something into the toilet. In October they discovered an electrical issue. That also took some time to fix.

The landlord testified that the social club was re-opened on December 30; a sign was posted to that effect; and since December 30 they have not received any request to rent the club.

The tenants argued that the social club provided an important opportunity for socialization for the residents of the park and its' closure was retaliation by the landlord against the homeowners association and its' activities.

This tenant's evidence is that he attended the homeowner association events at the social club but no others.

Analysis

The social club is a recreation facility that was existing in the park when this tenancy was entered into. As such, access to the social club is a service or facility included in the rent.

As set out in *Residential Tenancy Policy Guideline 22: Termination or Restriction of a Service or Facility*, where a tenant claims that the landlord has reduced or denied him or her a service or facility without reducing the rent by an appropriate amount, the burden of proof is on the tenant. The *Guideline* also states that where there is a termination or restriction of a service or facility for quite some time, through no fault of the landlord or the tenant, an arbitrator may find there has been a breach of contract and award a reduction in rent.

The landlord testified that the facility was closed for repairs for several months but it is open again. Neither the tenant nor the tenant's representatives contradicted the landlord's statement that the social club was again open.

The tenant alleges that the closure was an act of retaliation by the landlord.

On the one hand the e-mails from the landlord to the homeowners association in the fall make no reference to difficulties in obtaining tradespeople, as suggested by the landlord in her testimony. This suggests that the landlord was not being particularly diligent in having these repairs completed.

On the other hand, this application is one of three before me in which the tenant is claiming compensation for the closure of the social club. Each applicant is claiming $35.00 per month, for a total of $210.00. If all 71 tenants apply for the same relief and are successful, the total award against the landlord will be $14, 910.00, not including reimbursement of filing fees. If only the 26 members of the homeowners association apply for the same relief and are successful, the total amount awarded against the landlord will be $5460.00. The total potential claim looks more like punishment than compensation.

Whether compensation is awarded to a tenant for breach of section 21(2), a wrongful termination or restriction of a service or facility, or for breach of contract because of an extended disruption in service that was not the fault of the landlord, the test is the same – what is the reduction in value of the tenancy agreement? (See sections 21(2)(b) and 58(1)(f).)

The tenant's evidence is that he used this facility on two or three occasions in the past twenty months. His evidence does not actually say that he was in the community in December and would have attended the Christmas Pot Luck if it had been held in the social club. Based on his use of the facility it is clear that the social club does not comprise a large percentage of the value of this tenancy agreement to this tenant.

The evidence does not establish that the value of this tenancy agreement was reduced, other than in a nominal way, by the closure of the social club from July 15 to December 30. I award the tenant damages in the amount of $5.50 - $1.00 for each month the club was closed.

As the social club is now re-opened no further order will be made.

As the tenant has not achieved particular success on this application no order for reimbursement of the filing fee paid by the tenant will be made.

Conclusion

The tenant is awarded nominal damages in the amount of $5.50. Pursuant to section 65 this amount may be deducted from the next rent payment due to the landlord.

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: February 04, 2015

Residential Tenancy Branch