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

The tenants had filed separate applications claiming the same relief based upon substantially similar circumstances so their applications were joined.

The tenants appeared at the hearing accompanied by two advocates. The landlord also appeared at the hearing. The landlord had not filed any written material in advance of the hearing but said she was prepared to proceed.

Immediately prior to this hearing I had heard an application by another tenant of the same manufactured home park claiming some of the same relief as these tenants. The same landlord and same advocates also appeared at that hearing. The parties all agreed that the evidence given by the parties at the previous hearing could be applied to the same issue – the closure of the social club – at this hearing.

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
Tenancy Agreements
AH's tenancy commenced June 1, 1995. At the start of the tenancy the monthly rent was $175.00. As of the date of the hearing the monthly rent is $242.07.There is a written tenancy agreement but it does not specify what is included in the rent.

MB's tenancy commenced September 1, 2001. At the start of the tenancy the rent was $181.00. AS of the date of the hearing the monthly rent is $235.65. There is a written tenancy agreement but it does not specify what is included in the rent.

The parties all agree that the rent includes garbage pick-up and water. Some residents pay a sewage charge to the municipality.

Social Club

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 tenants' evidence is that they attended the homeowner association events at the social club but no others and they have never rented it for a personal purpose.

Swimming Pool
The landlord's parents built their home on the same property as the park. Immediately adjacent to the house is an outdoor swimming pool.

The landlord said her parents made the pool available to tenants who wanted to bring their grandchildren swimming. The tenant would pay a deposit for the kay and agree to supervise the children.

The landlord said that to access the pool residents would have to go up a 60 foot long driveway, cross about 20 feet of her parents' patio, and go down some stairs to access the pool, at the back of the house. The pool itself is fenced and locked. It was only filled in the summer months.

Both tenants testified that this was the procedure they followed with the landlord's mother. Both families brought their grandchildren to the pool when the grandchildren were visiting. One tenant said she used the pool by herself only once; the other said his wife use it on a number of occasions.

The landlord testified that in 2003, 2004 and 2005 the pool leaked badly – losing about a third of the water every week and her parents were constantly filling it. As a result her parents' water bills were very high. Her parents had a contractor try to fix the problem but when the leak could not be located, they decided not to fill it again. It has not been used since.

There was no notice regarding the pool closure sent to the tenants.

The landlord argued that the pool was not a service included in the rent; only a personal kindness extended by her parents to the park residents. She points out that the tenancy agreement does not contain any reference to the pool.

Both tenants testified that when they entered into their respective tenancy agreements they were told by the landlord that one of the features offered by the park was the pool.

The tenants also filed copies of two notices of rent increase that were sent to a different tenant in 1994 and 2001. On each of those notices the swimming pool and coin-op laundry are listed as services included with the rent. A copy of that tenant's tenancy agreement was not included in the evidence.

Both tenants testified that when they heard that the pool would not be opened they made not inquires of the landlord and took no action.

The tenants' written submission states that they did not become aware of the landlord's obligation to compensate them for closure of the swimming pool and laundry facilities until discussions arose among the tenants after the social club.

The tenants claim compensation in the amount of $15.00 per month from October 2005 to December 2011, a total of 111 months.

Coin Laundry

When this park was first opened as a campground a coin-operated laundry was constructed. It consisted of one washer and two dryers located in a separate building. The building was left open 24 hours per day, every day. At some point the second dryer was damaged and rendered inoperable.

The landlord testified that starting in 2008 or 2009 her parents, who were still managing the park, started receiving complaints from the residents who lived near the laundry building of pot smoking in the laundry building. When her father found that one of the

coin mechanisms had been jammed he locked the door of the laundry. That was in May 2010.

The landlord testified that since the door was locked they have never received a single request from a resident to use the facility.

The tenants testified that they never personally used the laundry but they had thought of it as a back-up to their own laundry equipment if that was ever required.

Both tenants said that they knew that another tenant DP used the laundry and stored his bicycle there. DP won arbitration against the landlord in March of 2010. The tenants argued that the closure was retaliation against DPO for taking it to arbitration. DP is now deceased.

Other than DP the one tenant did not know anyone else who used the laundry; the other tenant said she knew two elderly ladies who used it. They are also deceased.

The tenants each claim compensation of $5.00 per month since May 2010 for 57 months, a total of $285.00 each.

Analysis

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 first question is whether the social club, the swimming pool or the laundry are services or facilities included in the rent.

The social club is a recreation facility that was offered to the tenants after their tenancy agreement had been signed without any documentation specifying that access to the social club is not specifically included in the rent. As such, access to the social club is a service or facility included in the rent.

I also find that the laundry is a facility that was included in the rent. It was there when these tenancy agreements were entered into, it was open to all the residents of the park, it is located some distance from the landlords' home, and although the landlords did not use it personally they maintained it for many years. I also find that locking the door of a facility is the same as closing a facility.

Whether the swimming pool was a feature of the park included in the rent or a private facility shared with neighbours is not as clear cut. The tenancy agreements do not specify what the rent includes. I believe the tenants when they say that they were told by the landlord that they could access the pool. However, this statement could be interpreted as either a term of the tenancy agreement or a gracious offer by a new landlord.

I did not find the notices of rent increase of any help in determining this question. If the tenants had shown that this individual had a tenancy agreement that was identical to their own, it may be possible to infer that their rents also included access to the pool. The notice of rent increase dated August 1, 1994 states that the last rent increase received by this particular tenant was in 1992, so his tenancy commenced prior to 1992, well before either of these tenancies. It cannot be assumed that his tenancy agreement is the same as the ones signed in 1995 or 2001.

If the applicants had filed notices of rent increase of their own that clearly stated that their rent included the pool that evidence would have been determinative of the issue – but they did not.

Finally, the physical layout of the pool is consistent with it being a private facility, not a public facility like the laundry.

The onus is on the applicants to establish each element of their claim on a balance of probabilities. They have not succeeded in tipping the balance of probabilities in favour of the pool being a facility included in the rent.

The next question is what compensation should the tenants be granted for lack of access to the social club and laundry?

The landlord testified that the social club 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 *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.

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 alleges that the closure of the social club and laundry were acts of retaliation by the landlord against tenants who had challenged them. The claim of retaliation was not made with respect to the pool closing.

On the one hand the e-mails from the landlord to the homeowners association in the fall about repairs to the social club 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.

Further, the total claims for compensation by these two tenants were for a reduction in the monthly rent of $55.00 per month. For AH this represents a rent reduction of 22.7%; for MB a rent reduction of 23.3%.

The total potential claim looks more like punishment than compensation.

The tenants' evidence is that they used the social club on three occasions in the past three years and they never used the laundry. Although it is almost five years since the laundry was closed the tenants are within the limitation period for filing a claim under the *Residential Tenancy Act*. However, their failure to take any action – even something as simple as telephoning the Residential Tenancy Branch on a toll-free line to obtain some information – may be considered when determining the value of the laundry to these tenants.

Based on their usage of either of these facilities by the tenants it is clear that neither the social club nor the laundry comprise a large percentage of the value of this tenancy agreement to these tenants.

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 or the laundry since May, 2010.. I award the tenant damages in the amount of $5.50 - $1.00 for each month the social club was closed. As the evidence is that the tenants used the laundry even less often then the social club I award nominal damages for the closure of the laundry in the amount of $1.00.

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

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

In total I award each tenant nominal damages in the amount of $6.50. Pursuant to section 65 this amount may be deducted from the next rent payment due to the landlord.

Conclusion

The tenants were partially successful on their application and nominal damages only have been awarded to them.

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