Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VRAN ENTERPRISES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDF, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- an "other" remedy.

The tenant attended the hearing. The individual landlord (the landlord) attended at the hearing to represent both himself and the corporate landlord. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Neither the tenant nor the landlord raised any issue with service of documents.

Preliminary Issue – Scope of Proceedings

The tenant's application seeks a monetary order of $10,000.00 and an "other" remedy.

The tenant set out in the details of dispute box the following details:

1 Encroachment of property (site) behaviour + harassment
2 landlord saying I have to let my neighbour on disputed site – access to it at all times
3 Monetary order for excalivating, things that should have been done
4 also for above in number 1

[as written]

In relation to the $10,000.00 monetary order sought, there is no detailed calculation of how the tenant arrived at her $10,000.00 figure provided in the application. In the tenant's evidence, which was delivered to the Residential Tenancy Branch, there is a hand-written submission from the tenant. Contained in these submissions there is the following notation:

7,500 – landscaping + excalivating etc by [worker]
1,000 – plumbing [name of contractor]
765 – gas hook up

735 – behaviour and encroachment + repair and work done to disputed area in top corner of my property.

[as written]

At the hearing I asked the tenant what relief she was seeking from me. I set out that I understood that the tenant was asking for total compensation in the amount of $10,000.00, but that I did not understand the tenant's claim in relation to an "other" remedy. The tenant merely stated that she wanted me to determine to what she was entitled. The tenant could not identify what amount she was seeking in compensation for any given breach of "behaviour and encroachment + repair and work done" or what non-monetary remedies she sought.

Pursuant to paragraph 59(2)(b), an application of dispute resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. The purpose of the provision is to provide the responding party with enough information to know the applicant's case so that the respondent might defend him or herself.

It appears from the tenant's application and submissions that she is seeking $735.00 in relation to the trespass issue; however, I am not clear how the tenant determined these amounts and how these amounts breakdown. In particular, I am unclear what compensation the tenant seeks in relation to the alleged landlord's breach and what compensation the tenant seeks in relation to her neighbour's alleged trespass. I asked the tenant to explain the calculation at the hearing, but she could not elaborate. I am not clear from the tenant's application to what the claim of $735.00 relates and if the tenant is seeking an order that the landlord comply. I was still not clear after asking the tenant to explain at the hearing.

I find that the tenant did not sufficiently set out the details of her dispute in such a way that the landlords would have known what the tenant was seeking in the claim.

I dismiss this portion of the tenant's application with leave to reapply.

Issue(s)

Is the tenant entitled to compensation for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

This tenancy began 1 July 2009. Current monthly rent is $840.00.

The tenant provided cheques totalling $9,265.00:

Item	**Amount**
8.Aug.2009 “for plumbing”	$1,000.00
4.Sep.2009 “landscaping etc”	7,500.00
14.Aug.2009 no memo	765.00
Total of Cheques	**$9,265.00**

The tenant’s submissions indicate that the 14 August 2009 expense was in relation to the “gas hook up”.

The tenant testified that the reason she was claiming for the amounts incurred in 2009 in 2015 is because she recently discovered a neighbour did not pay for these improvements to her site.

The landlord testified that in 2009 the site was appropriate for an older style manufactured home. The landlord testified that the older manufactured homes were not as long as the newer style manufactured homes. The landlord testified that because the tenant’s manufactured home was a new-style home, the site was not long enough to accommodate the home. The landlord testified that he rented the site to the tenant “as is” on the basis that if the tenant wished to place her manufactured home on the site she would have to alter it so that it would fit. The landlord testified that this involved installation of a retaining wall at the back of the site.

The landlords submit that the tenant’s payment to SG for $7,500.00 may have been for extension of the concrete foundation to accommodate a sunroom and for landscaping around the site. The landlords submit that the cost of $1,000.00 and $765.00 were the costs of gas and plumbing “hook up” services to the manufactured home and the tenant’s expenses to incur.

In accordance with clause 9 of the tenancy agreement:

> *The Tenant agrees that the following amenities and fixtures on the Site are the property of the Tenant and that the Tenant is responsible for their maintenance and up keep:*
>
> [driveways, landscaping, retaining wall and drainage are checked]
>
> *Any alterations or additions or improvements to the exterior of the Tenant's home or to the Site require the prior written approval of the landlord as well as any permit(s) required by the municipal authority.*
>
> *Such improvements are the property of the Tenant, and ownership is transferred to the Purchaser if the home is sold on the Site. No compensation of any kind is payable to the Tenant by the Landlord for Site improvements if the Site is vacated in the future. Maintenance of improvements is entirely the responsibility of the Tenant, and the Landlord is not responsible or liable in any way for their repair, safety, construction standards, or future condition. Unless otherwise specified in a written agreement between the Tenant and the Landlord, the Tenant is responsible for expense and maintenance of (a) the Tenant's dwelling unit, skirting and additions; (b) the utility connection lines from the park's service points to the manufactured home; (c) set up, blocking and periodic leveling of the manufactured home and additions; (d) the Site's landscaping, fencing, rock walls, driveways, or other improvements.*
>
> *[emphasis added]*

Page 8 of the tenancy agreement includes the following information:

> *The landlord is not required to maintain or repair improvements to the manufactured home site by a tenant occupying the site or the assign of the tenant unless the obligation to do so is a term of this Tenancy Agreement.*

Analysis

A portion of the tenant's claim relates to the recovery of certain expenses the tenant believes that she wrongfully incurred at the beginning of the tenancy. The tenant believes that those expenses were the legal obligation of the landlords to incur. The tenant submits that these expenses relate to the installation of a retaining wall, plumbing, fencing, and landscaping.

At the hearing, I asked the parties for their submissions on the applicability of the *Limitation Act* to the extinguishment of this claim. The tenant purported that the claim she is making is subject to a six year limitation period. The landlord merely stated that the claim arose in 2009.

The current limitation period is found in section 53 of the Act. Pursuant to subsection 3(2) of the *Limitation Act, 2012* and Residential Tenancy Policy Guideline "*16. Claims in Damages*", the *Limitation Act, 2012* does not apply to this dispute. This would mean that the limitation date under the current regime is two years from the date the tenancy ends. Historically, this exemption was less clear; however, the *Limitation Act, 1996* is a default regime. Where a more specific act contains its own limitation period, that limitation period is the applicable limit. As the tenancy has not ended, the tenant's claim is not extinguished under the current or past regimes.

Clause 9 of the tenancy agreement sets out that improvements are the tenant's responsibility to incur and further that no compensation of any kind is payable at the end of the tenancy. A term of tenancy agreement requiring the tenant to pay for improvements is not inconsistent with the Act. In fact, section 26 specifically contemplates improvements made to a site by a tenant.

The landlord testified that the reason the site required the modifications was because it was not equipped to house the tenant's newer model manufactured home. I accept the landlord's testimony that the modifications were necessary in order for the tenant's newer-style manufactured home to fit on the lot equipped to house an older-style manufactured home. As these improvements were made at the tenant's own initiatives they are the sole responsibility of the tenant to incur unless otherwise agreed to by the landlord and tenant. There is no indication of any such other agreement. The tenant's application to recover the costs of excavating or the installation of the retaining wall is dismissed without leave to reapply.

Similarly, any landscaping costs incurred to improve the property are the tenant's responsibility to incur unless otherwise agreed to by the landlord and tenant. There is no indication of any such other agreement. The tenant's application to recover the costs of landscaping is dismissed without leave to reapply.

I find that it is more likely than not that the fees in respect of "plumbing" and the unspecified other amount (believed to be the gas hookup) are the costs incurred by the tenant at the beginning of the tenancy to connect her manufactured home to utility services. Pursuant to clause 9 of the tenancy agreement the costs of these utility connections is the responsibility of the tenant. There is nothing in the Act that prohibits this allocation of expense. As such, the tenant's application to recover the costs of the plumbing charges and gas charges is dismissed without leave to reapply.

Conclusion

The tenant's claim for damages sustained in 2009 is dismissed without leave to reapply.

The remainder of the tenant's claim is dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: June 09, 2015

Residential Tenancy Branch