Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OPT, RR, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order for money owed or compensation for damage or loss under the *Manufactured Home Park Tenancy Act (Act*), regulations or tenancy agreement; For an Order of Possession of the site; for an Order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlords for the cost of this application. The hearing was adjourned to allow more time to hear evidence from the parties and their witnesses and was reconvened.

The tenants and landlords (the landlord) attended the conference call hearing; gave sworn testimony and were given the opportunity to cross examine each other and witnesses on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

- Are the tenants entitled to an Order of Possession of the site?
- Are the tenants entitled to an Order allowing them to reduce rent for services or facilities agreed upon but not provided?

Background and Evidence

The parties agreed that this tenancy started in September, 2010 and the tenants moved onto this new site on November 04, 2013. Rent for this site is $250.00 per month. This amount is discounted by $5.00 if the tenants pay their rent before the end of each month.

The tenants testified that they had filed a previous application and a hearing was held on May 20, 2014 and reconvened on June 17, 2014. At the previous hearing the parties reached an agreement on the following conditions:

1. The landlord will have the porch, stairs and secondary door to the tenants' manufactured home built as per the building inspector's report, including a landing with a deck and a landing with stairs at no cost to the tenants;
2. The landing with the deck will have a vinyl or Dura-deck type flooring at no cost to the tenants;
3. The landlord will provide a machine for excavating and landscaping at no cost to the tenants which will include a sidewalk;
4. The landlord will ensure a vapor barrier on the skirting of the tenants' manufactured home is sealed and another access added at no cost to the tenants;
5. The work will be completed in a timely manner, and in any event by July 15, 2014;
6. The landlord agrees to provide the excavating for post supports suitable for a carport if requested by a purchaser of the tenants' manufactured home at no cost to the tenants or a purchaser, and the tenants may advertise that feature in a real estate advertisement.

The tenants testified that the landlord breached parts of this agreement and part of the work agreed upon was not completed by July 15, 2014. The tenants testified that the landlord wanted to move the tenants' mobile home to a new site due to continuous flooding occurring on their old site, which the landlord could not remedy. The landlord had agreed to cover all costs associated with moving the tenants' mobile home to the new site. In the move the landlord's contractors caused damage to the flashing above the skirt of the tenants' mobile home. The tenants testified that the landlord would not replace the damaged flashing and this had to be replaced by the tenants to prevent moisture entering the walls of their mobile home. The tenants referred to their photographic evidence showing the damage to the flashing and the new flashing put on by the tenants. The tenants have provided an invoice for the costs incurred for this work of $1,527.75 and seek to recover this from the landlord.

The tenants testified that the landlord did put up new skirting around the tenants' mobile home, but the wrong materials were used and the workmanship was poor. This has left the skirting not connected properly to the ground or the mobile home, no supports were fitted behind the skirting which has caused it to buckle, and the skirting used is very thin and will not provide protection to pipes under the trailer in the winter months. The vapour barrier has not been attached correctly causing the skirting to rattle and bow out. The landlord had agreed at the last hearing that the vapor barrier on the skirting of the tenants' mobile home would be sealed; however, this has not been completed. The tenants referred to their photographic evidence showing the vapour barrier incorrectly fitted under the mobile home.

The tenants testified that the skirting was screwed to the mobile home and did not take into account the land settlement in accordance with the bylaws. This will cause the skirting to pop out when it gets cold. On the old site the mobile home was only two feet off the ground; on this site the front of the home is two feet off the ground and the back is five feet off the ground. This is specialized work and the tenants contacted a company in the area to do the work. The workers came out and informed the tenants that the incorrect skirting had been used, no treated wood was placed down on the ground to

nail the skirting to and to seal the vapour barrier to and no supports had been put in behind the skirting. The company has provided a quote for the work which includes sealing the vapour barrier and the tenants seek a Monetary Order to obtain the amount of $5,470.00 so the tenants can use this certified company to do the work as the landlord's contractors failed to complete it correctly.

The tenants testified that the landlord has used substandard contractors to do all the work agreed upon and although some of the work did pass building code the building inspector was unhappy about the quality of the workmanship. If the tenants can use certified contractors their work is guaranteed.

The tenants testified that they had the use of an extra addition at their previous site. This was torn down when they moved sites and was not replaced by the landlord. As both the tenants suffer from ill health they made the decision to sell the home and move to a warmer climate in Canada. They informed the landlord at the beginning of May, 2013 that they would be selling their home. The landlord then informed the tenants that she was going to relocate the home. At that time no one wanted to purchase the mobile home due to the flooding and because it was going to be relocated. The tenants put some of their belongings into storage while the home was up for sale to make it more appealing to prospective purchasers. The landlord did not want to use a local company to relocate the mobile home and it took from May, 2013 to November, 2013 to move the mobile home due to the landlord's haulier breaking his wrist and the landlord's reluctance to use a local haulier.

The tenants testified that they kept their belongings in storage as the landlord had agreed to landscape their new site; however, this work was never completed as agreed and it made the unit difficult to sell on the park as the other homes all had beautifully landscaped sites and this made the tenants' site less appealing to prospective purchasers. The tenants referred to a letter from their realtor concerning the landscaping issues. The tenants seek to recover storage costs incurred from the time the landlord agreed to do the landscaping at the previous hearing in July 2014 to June,

2015 of $2,457.00. As the tenants have still had to use the storage facilities for their belongings as the landscaping has still not been completed it would be detrimental to the sale of their mobile home if there had to put all their belongings into the home as they lost their addition when they moved sites. The tenants seek to recover additional costs incurred until next year when the landlord could start the landscaping again due to adverse weather conditions throughout the winter months.

The tenants testified that they have obtained quotes for the landscaping to be done. They contacted certified landscaping companies and selected the cheapest quote of $10,109.67. This work would involve scrapping the soil down to get rid of the deep rooted weeds on the site, adding three inches of top soil and laying sod. If the tenants had to wait for seed to grow in this climate it could be a further two years before their site looked in the same condition as other sites on the park. The tenants referred to their photographic evidence showing other sites and the invoice from the landscaping company.

The tenants testified that the landlord did have 35 yards of dirt delivered but of this the tenants only got three yards as other tenants were allowed to come and take it for their yards and some blew away as the landlord did not use it to landscape the tenants' site. The tenants feel they have waited long enough for the landscaping to be completed by the landlord and just want their site to look in the same condition as others on the park.

The tenants testified that the landlord has continued to harass the tenants and gets angry at the tenants because they refused to mow weeds on their site. The tenants testified that they refused to mow weeds and informed the landlord they will mow their site when the landscaping is done. The landlord then threatened to take back half the tenants' site and give it to a neighbour. The tenants obtained the services of a lawyer who wrote to the landlord about these and other issues. The tenants testified that they refused to give up half their site that they have paid rent on for over three years. The tenants seek an Order of Possession for their site to prevent the landlord taking any portion of their site.

The tenants seek a rent reduction as they have been unable to use their outdoor area since they moved sites in November, 2014. The site has not been landscaped as agreed at the previous hearing by July 15, 2014. The site continues to be filled with rocks, pebbles, dust, gravel, sand, dirt and weeds. The landlord did put down some bark mulch at the front of the property and the tenants planted a flower bed to try to make the site look better but the landlord failed to do the remainder of the landscaping. The tenants seek to recover half the rent paid for the last year since the agreement was made and the order issued in July 2014. The tenants would like to extend this to October, 2015 as the landlord has still not complied with the agreement.

The tenants testified that the landlord has completed many renovations around the park but their site has not been improved. The tenants want to sell their mobile home and as the landlord has not complied with the previous agreement this was left the tenants in a position where their site is substandard to other sites on the park and has potentially prevented the tenants selling their home.

Landlord’s rebuttal

The landlord testified that she did not agree to repair any damaged flashing at the previous hearing. Flashing is supposed to be an overhang and is a drip edge between the walls and the skirting. This should be attached above the skirting and the tenants flashing did not get damaged when the mobile home was moved. The tenants did not discuss any damage until they became angry with the landlord over the issue with sprinklers. If the tenants want to rip off the skirting then the flashing will get damaged. The previous Arbitrator ordered the landlord and tenants to have a meeting between the first hearing and the reconvened hearing. The tenants did not make any mention of damage to the flashing during that meeting or at the previous hearing.

The landlord testified that the landlord should not be responsible for the tenants' storage fees. The tenants used storage when they were trying to sell their unit. The landlord did ask the tenants to get their lawn equipment out of storage to care for the lawn if the landlord put it down. The tenants refused and the landlord had to loan the tenant

hosepipes and other equipment. The tenants used storage because they wanted to de-clutter their home when they were trying to sell it. The reason the landlord did not use a local haulage firm was because that haulage firm refused to move the tenants' addition on their mobile home. Everything happened at once when the landlord wanted the relocate the tenants' mobile home; Fortis went on strike and they could not disconnect the gas supply and the hauler broke his wrist. Then it was too late to relocate the mobile home that year and it had to wait. The landlord testified the reason they wanted to move the tenants' mobile home was because the original site was sitting in water. The landlord had to pump the water away from the site and at that time there was no other site to move the home to. Permits had to be obtained. No one was going to purchase the tenants' mobile home while it was sitting on that other site.

The landlord testified that three quarters of the tenants' site has been landscaped. The entire front yard was landscaped with bark mulch and the back has had a rock wall installed. It is the tenants who refuse to pull weeds. The landlord referred to a landscaping invoice which states that rocks were removed from the roadside in April, 2015. The lot was leveled on the tenants and their neighbour's side. An oil tank and sandbox was removed from the tenants and their neighbour's site; topsoil was put down in the yard between the neighbour's and the tenants' homes; topsoil was put down in the roadway side on the tenants' site; screening soil was put behind tenants' site and used for other sites; bark mulch was extended with landscaping fabric to the neighbour's site.

The landlord disputed the tenants' application for a rent reduction. The landlord testified that all the tenants had to do was go outside to use their yard. The yard was ready for seed but the tenant had informed the landlord that they would not water the seed so the landlord did not put any down. The two hoses lent to the tenants stayed rolled up for over a year. The landlord offered to share some irrigation costs with the tenants as a line was being put through the yard. The tenants refused to split the cost for the timer for the sprinklers or for sprinkler heads. The landlord testified that she offered to seed

the tenants' yard many times; however, after June 01, 2015 there were water restrictions put in place so no one was allowed to water their yards.

The landlord testified that they could not complete the agreed upon work by the deadline of July 15, 2014 as they did not get their building permit until July 02, 2014. Grass cannot be seeded until just before the first snowfall. This could not be completed last year as the tenants would not lay out a grass barrier. The tenants have a 10 foot lot and much of that is taken up by a propane tank and their deck. The landlord testified that the reason grass seed was not put down on the other side of the tenants' lot was because the landlord had to wait for the building inspector.

The tenants disputed the landlord's testimony. The tenants referred to their before and after pictures showing the flashing on their mobile home before it was moved and state these pictures show it was in a good condition. When the landlord's contractors put on the skirting they bent the flashing as shown in the pictures. The tenants testified that it was brought up during the first hearing. It was not brought up again as the landlord had agreed to fix it. All the pictures showing the bent flashing were provided with evidence for the original hearing. The landlord is now saying she knew nothing about it which is false. The landlord did not honor her word to fix the flashing so the tenants had to pay to have it replaced to protect their mobile home from water.

The tenants dispute the landlord's claim that landscaping work was done on their site. The landlord had the site leveled. The space behind the site is an industrial area and they put gravel back on that area. Weeds started to come back through the dirt and gravel. The 35 yards of screening soil was not top soil and when the top soil was delivered the tenants only received three yards out of the 15 yards. The oil tank was not on the tenants' site. The yard was left with rock gravel and weeds. The tenants did not water the weeds to prevent them growing any bigger.

The tenant testified that the bark mulch and rocks put down at the front of the yard has been put where the driveway should go. The tenants now have to park in front of the

mobile home on rocks and their car barely fits there as shown in the tenants' photographic evidence. The tenants referred to their photographs showing the yard has only been leveled and not landscaped. The tenants testified that they would have agreed to share costs for sprinklers; however, the landlord would not put it in writing so the tenants refused to consider it and it was then that the landlord said she would not do the landscaping.

The tenants testified that they have no idea what the barrier is for the grass that the landlord referred to. The landlord could have put grass seed down in 2014 and failed to do so in accordance with the agreement reached. The building inspector could not sign off on the building work because the landlord's contractors quit the job and her new contractors could not finish the work in time. The tenant testified that when she asked the landlord when the landlord was going to finish the landscaping the landlord said not this year. The tenant informed the landlord that they would have to reopen their previous file because the landlord had not complied with the agreement made and the landlord told the tenant she would be crazy to do that. The tenant testified that they did not agree to take their lawn equipment out of storage because there was no grass to mow only weeds.

The tenants testified that since the last hearing on October 05, 2015 the landlord posted a letter saying she was going to do the driveway on the tenants' site. The tenants cleared the site of vehicles and the landlord's men came and prepared the ground for paving. The landlord's workers said they could not proceed unless they removed the front skirting of the mobile home. The tenants refused to allow this as it was not obstructing the paving of the driveway. The landlord sent a total of four letters to the tenants concerning this matter and eventually the landlord's workers did pave the driveway without removing the skirting.

The landlord testified that she attempted to contact the company that had provided a quote for skirting. The landlord testified that they would not take her call. The landlord testified that the skirting that was used was purchased from the same company and

they provided installation instructions which were followed by the landlord's workers when they put up the skirting. The landlord agreed that the winter session was not the best time to put the skirting on because this is a vinyl product that expands and contracts and the ground was frozen. The landlord testified that they had ordered three boxes of vinyl skirting and a trim piece kit. There was no instruction about other structures being added. The skirting was installed as per the manufacturer's instructions. It said to put the channels down for the skirting to sit in making it free to move when it contracts. This had to be done in the winter season to protect the tenant's pipes and it may have needed to be trimmed later. The landlord testified that the tenants' quote is not believable as the quote includes building material for 480 feet of 2X4 treated wood. The trailer only has a circumference of 160 feet so too much wood is on the quote. The quote also refers to labour costs of 3-5 days at $1,000.00 per day. This is an outrages cost for a job which should only take a day or two. The landlord testified that even if she accepted that she had to do new skirting for the tenants it should not cost this much. The landlord testified that it is unreasonable as the tenants have only provided one expensive quote.

The tenants testified that the wood shown on the quote is for the skirting supports and a piece goes at the top and bottom with criss cross sections. This goes all around the mobile home to provide support for the skirting to prevent it bowing and it should have been done correctly the first time by the landlord. Part of the labour quote is to remove the skirting put on by the landlord that is not fitted properly. The tenant agreed that the company who supplied the landlord was the same company; however, since then that company is now being run by another person and they no longer use that type of skirting as it is not suitable for areas experiencing a lot of snow. The tenant testified that the landlord's workers could not have read the installation instructions properly as he also put the skirting on upside down and hard screwed it to the mobile home, when it is supposed to be floating and supported. The skirting the landlord paid to put on was of an inferior quality and the new skirting is sturdier.

The tenant testified that the skirting on the mobile home before it was moved by the landlord consisted of four layers including an insulated layer and cross supports. The vapour barrier was sealed to this. It was also covered in a metal siding that matched the mobile home and could have lasted another 50 years. The skirting put on by the landlord is white, has no stability or insulation and does not have the two inch allowance. When the area gets heavy snow this is likely to buckle and crumble as it is not even held into the track.

The landlord testified that with regard to the vapour barrier; the tenants' photographs were taken before the building inspector had been and signed off on the work. The building inspector raised an initial concern about the vapour barrier as shown in the landlord's documentary evidence and the landlord was only told then to spread the vapour barrier out and seal it. When the building inspector came back in August, 2014 his report says the construction appears acceptable subject to correction of the items noted. The building inspector did not note at that visit that the vapour barrier still required work. The tenant would not allow anyone else to go there or to provide an estimate for any further work.

The tenant testified that the landlord called other contractors and asked them not to do any work. The landlord also called the tenants' prospective landlord that they were hoping to move to and gave them bad information about the tenants. The tenant's contractor did not want the landlord to deal with him and they are the only company locally that can do this work professionally. Other contractors did not want to get involved in a dispute and would not provide a quote. The tenant testified that the two building inspectors that came out at different times did not remove any of the skirting and look at the vapour barrier; they were only inspecting the other building work completed by the landlord on the mobile home. The vapour barrier is still in the same condition as shown in the tenants' photographic evidence and this clearly shows it has not been fitted properly to prevent moisture, rodents and insects getting into the mobile home.

The tenant testified that she spoke to the building inspector last month about the deficiencies on their site and that building inspector said the place was a mess; however, if a shoddy job was done, but the work was till up to code, the building inspector would still have to sign off on it.

The tenants call there witness DJ. This witness installed the tenants' new flashing. The tenant asked the witness why she called him, what did he observe at their home, how was it repaired, and what was his opinion of the workmanship for the old flashing and skirting installation. The witness responded that the tenants called him to replace the flashing on their home. The old flashing was all bent up so the other workers could install the skirting. The flashing was bent beyond repair. In order to replace the flashing the skirting had to be loosened on the edge and new flashing had to be designed to go over the skirting as it was high. All the flashing had to be replaced as it caught water. The workmanship of the skirting was very poor and unprofessional. The tenant asked if the witnesses company specialized in flashing. The witness responded that he is a general contractor.

The landlord asked the witness if he could provide a quote to replace the skirting and if so why did he not do one. The witness responded that he could provide a quote and he hadn't already done so because he has not been asked to do one.

The tenant testified that they did not ask this contractor to do a quote to replace the skirting as he was busy at the time and is a general contractor and not a specialist skirting contractor.

The tenants call their witness TT. TT is a landscaper that provided the tenants with a landscaping quote. The tenant asked the witness why they called him out, what did they ask him to provide a quote for, were there weeds to be removed, and is the condition of the yard suitable to put grass seed down. The witness testified that he was called out about doing top soil, removing rocks and landscaping by putting grass seed down. Weeds would have to be removed first as there were weeds, rocks and no grass. The

yard was not in a suitable condition to put grass seed down as there is no top soil. If top soil was added they could have put turf down as that way they had instant grass. If seed was put down it would take a lot longer for the tenants' yard to look like other lots in the park. If seed was put down in the spring it would have to be watered well to provide grass in the summer months.

The tenant asked the witness if he measured the lot and is it a corner plot. The witness responded yes he did but there were no pegs showing the boundaries of the lot. The exact size can only be determined if the landlord pegs the lot put.

The landlord asked the witness about his quote to lay grass sod of 9036 feet. The witness responded that this measurement was taken from the neighbour's mobile home to the road. The landlord asked the witness if the lot was only 5,000 square feet and did he take off footage for the mobile home, the deck and the pathway. The witness responded that no he did not that was his mistake as there were no stakes in the ground showing the size of the lot. The landlord asked the witness about his quote for trucking dirt in and taking dirt and weeds out, for trucking in the sod, and for the labour costs and other items. The witness responded that he would have to take the weeds and top of the dirt away, bring in top soil, bring in and lay sod. The landlord asked if this work would cost nearly $5,000.00 as quoted. The witness responded yes it is a lot of work including the trucking and other machinery.

The tenant testified that as soon as their mobile home was moved the landlord knew the flashing was damaged and that the tenants should have it replaced and the landlord would pay for this work. This is why it was not mentioned at the last hearing or put on the agreement between the parties by the first Arbitrator.

The tenants asked the landlord why they have been put in this position for the last two and half years. The landlord responded because the tenants refused to cooperate with the landlord. The tenants called the police when the landlord came to do work. The tenants quotes are extreme this is not a golf course but a yard and 10,000 square feet

of sod would also include the neighbour's yard. The correct size of the tenants' yard is around 2,000 square feet on both sides; however, on the left side there is also a sidewalk and deck so the amount of sod used would only be around 1,000 square feet.

The tenant disputed the landlord's testimony. The tenant agreed they have a sidewalk and deck and the police were only called when the landlord entered the lot to cut weeds. The tenant agreed she does not know the measurements of the lot.

The tenants asked the landlord why she did not do the landscaping as agreed in the summer of 2014. The landlord responded that the tenants refused to bring their gardening equipment and the landlord only refused to seed the yard when the tenants refused to water it. The tenant asked the landlord why she did not landscape this summer after the man levelled the yard. The landlord responded that she offered to put in underground sprinklers. Also 35 yards of top soil was delivered. The seed was not put down because the tenant refused to water it and would not contribute to underground sprinklers that were put in because of water restrictions that came into force in June, 2015.

The tenant asked the landlord why she is trying to remove some of the tenants' site they rent. The landlord testified that when she took over this park there were no site plans and the tenancy agreements and park rules are inadequate. The landlord has a surveyor coming out this year to survey each site and the landlord will put in new tenancy agreements and park rules. There must be 20 feet between the trailers to comply with city bylaws and any space left in the middle reverts back to the park land. All sites will be marked out. Part of the site the tenants' claim to have is part of the municipal land and is not part of the park or the tenants' site.

The tenant responded that they were shown this site by the landlord as it was a larger corner lot when they had to move their mobile home from their previous site. The landlord cannot now take this land away from them. The tenant testified that due to the shoddy work done by the landlord's contractors on other parts of the tenants' mobile

home and site they do not trust the landlord to arrange any more work as the tenants know it will not be completed by qualified contractors and will just put the parties back into another dispute. Due to this the tenants seek to use their own contractors for any further work on the site or mobile home.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses. Both parties have provided extensive documentary evidence which was been discussed and reviewed both at the hearing and when making this decision.

I find at the previous hearing held in May and June 2014 an agreement was reached between the parties that the landlord would do certain work that had not been completed when the tenants' mobile home was moved to this site. The landlord did complete some of the work as agreed but from the evidence presented I find the work to be of a poor quality and workmanship. Some of the work was not completed by the agreed upon date or within a timely manner after that date had passed. When an agreement is made and recorded at a hearing then this agreement is as legally binding as if that Arbitrator had made the decision. As such I find the landlord is in breach of this agreement.

The landlord wanted to relocate the tenants' mobile home as the issue with flooding on their old site could not be remedied. The landlord agreed to cover all costs incurred to move the tenant's mobile home and to landscape their new site. From the evidence before me I find the flashing on the tenants' mobile home was damaged either in the move, when their skirting was taken off, or when new skirting was put on the mobile home. As the landlord engaged the services of the contractors who did this work then it is the landlords' responsibility to pay for the cost of new flashing which had to be fitted to the tenants' mobile home in order to preserve the integrity of the home. I therefore

find the tenants are entitled to recover the cost for the installation of the new flashing of **$1,527.75.**

With regard to the issues with the skirting and vapor barrier; I find the tenants evidence more compelling in this matter as it is clear from their photographic evidence that even a lay person such as myself can see that that the skirting has been poorly fitted and has absolutely no support behind it to prevent it bowing and potentially cracking in the adverse weather conditions. Even if manufacturer's instructions had been followed had the landlord used a qualified contractor who had experience fitting skirting on mobile homes they would have known to use supports and timber to brace and secure the skirting to prevent bowing and bending and subsequent displacement of panels. Furthermore, the vapor barrier has clearly not been installed correctly and despite the building inspectors having signed off on this work the landlord was not able to testify that she saw the building inspectors remove the skirting and inspect the installation of the vapor barrier. Without doing so they could not have seen that the vapor barrier was not installed correctly. As a vapor barrier is essential to the integrity of the mobile home especially in the winter months I find by not ensuring it was fitted correctly this has potentially compromised the tenants' mobile home.

The landlord argued that the tenants' quotes are too high and only one quote was provided for this work. The landlord had the opportunity to deal with this issue as agreed at the last hearing as follows:

> *The landlord will ensure a vapor barrier on the skirting of the tenants' manufactured home is sealed and another access added at no cost to the tenants*.

The landlord failed to comply with this agreement in full by July 15, 2014 and as such the tenants have lost all faith in the landlord's choice of contractors to do this work. I am satisfied from the evidence before me that the tenants' quote for the vapor barrier and skirting is a genuine quote and as such I find the tenants' application to replace the

skirting and vapor barrier using their own choice of contractor is upheld and I award the tenants the cost for this work of **$5,470.00**.

With regard to the tenants' application for the landlord to pay the cost to landscape the yard; the landlord had agreed to do landscaping and this was recorded at the previous hearing as follows:

> *The landlord will provide a machine for excavating and landscaping at no cost to the tenants which will include a sidewalk;*

I find the landlord has done some landscaping at the front of the property and put in a sidewalk, The landlord did not complete the reminder of this work and the tenants have endured their yard with dirt and stones since the agreement was made. The landlord argued that this work was not completed because the tenants refused to water any grass seed the landlord put down and therefore the yard was not seeded. The landlord also argued that subsequent water restrictions in 2015 prevented her putting seed down as the tenants would not agree to pay towards the cost of some irrigation components to water the yard. The fact remains that the landlord entered into a legal and binding agreement to do the landscaping and she failed to comply with this agreement over the course of two summers in 2014 and 2015. The tenants' yard remains unsightly which could be detrimental to them listing their mobile home for sale taking into consideration the other homes on the park have well cared for yards.

However, I am not satisfied that the quote provided reflects the true size of the tenants' site as the contractor for the landscaping company agreed under oath that he could only base the quote on the overall size he thought the lot was. The landlord disputed this as he has included part of the neighbor's lot, has not taken the size of the mobile home off the overall footage or the sidewalk and deck. This would greatly reduce the overall square footage quoted.

The landlord testified that she has a surveyor coming to the site to determine the actual size of each lot as this was not recorded when she purchased the site from the previous owner. I am not therefore prepared at this time to award a Monetary Order to the tenants for landscaping.

I do; however, Order the landlord to provide legitimate markers showing the true size of the tenants' lot and measurements notwithstanding the municipal land adjoining the tenants' lot. I Order this work to be completed by December 20, 2015. The tenants must then provide the landlord with at least two quotes for the landscaping showing the price for both grass seed and sod and the landlord must then choose one of the companies who have provided a quote to do the landscaping. I Order the landlord to ensure the landscaping is completed as soon as the weather permits in the spring of 2016. If the landlord fails to comply with this Order the tenants are entitled to further compensation for the loss of the use of their yard and the breach of the original agreement made in June, 2014.

As the landlord did not comply with all aspects of the agreement reached in June 2014, I find the tenants have established their claim for a rent reduction from that date until the spring of 2016 or up to the time the work is completed on the landscaping. The tenants have applied to reduce their rent by $125.00 per month. I find this amount to be extreme and I find the value of the noncompliance is more realistically set at $90.00 per month. I therefore find the tenants are entitled to a retrospective rent reduction from July, 15 2014 of $45.00 for July, 2014 and $90.00 for each month thereafter to December, 2015 of **$1,575.00**.

Moving forward I find the tenants are entitled to reduce their rent by $50.00 per month until the landlord has completed the landscaping. As the tenants have been awarded an amount to replace the skirting and secure the vapour barrier the tenants must organise and complete this work as soon as possible and therefore no further compensation will be awarded for this portion of the landlord's noncompliance for the vapour barrier.

With regard to the tenants' application for an Order of Possession; the tenants still have possession of the site; however, their concern is that the landlord will remove part of their site when the size of the site has been determined. I am satisfied from the landlord's testimony that she must comply with city bylaws concerning the space allowed between sites on this park and I further find if there is municipal land adjoining the tenants' site then as the landlord does not own this land it could not be construed to be part of the tenants' lot when they first took possession of the lot. While I agree the landlord should have markers indicating the actual lot size these were not in place at that time and there is no indication of the actual size of the lot when the tenants took possession and started paying rent. The landlord must not remove any portion of the tenants' lot that was previously allocated unless it is to comply with a city bylaw. I am not therefore prepared to issue an Order of Possession for the tenants' lot at this time.

With regard to the tenants' application regarding storage fees; the tenants argued that they had put some belongings into storage in order to sell their mobile home and as the landlord did not move their home straight away they incurred further storage costs as they could not sell their home with it being relocated. When their home was moved the tenants had to continue to use storage as they lost a storage space previously enjoyed on their old site. The landlord disputed that she was responsible for storage fees. I have considered both parties arguments and evidence in this matter and find if the tenants wanted to sell their mobile home and clear it to make it more presentable for sale then this is the tenants' decision. If the tenants then could not retrieve things from storage because they lost some storage space when they moved sites, the tenants had the option to ask the landlord for the same storage facilities on their new site if this was agreed when the tenants' mobile home was moved.

I am not satisfied from the evidence presented that the tenants can hold the landlord responsible for storage costs. If the tenants wanted to make their unit presentable for sale and remove belongings then, although the time frame they could have marketed their mobile home has been extended, the tenants cannot hold the landlord responsible if they choose to put some of their belongings into storage. A party has an obligation to

mitigate any loss under s. 7(2) of the *Act*. If the tenants found they had too many possessions that required storage then they had the option to reduce their possessions or keep them in their home. Consequently, this section of the tenants' claim is dismissed.

As the tenants' claim has some merit I find the tenants are entitled to recover the filing fee of **$100.00** pursuant to s. 65(1) of the *Act*. A Monetary Order has been issued to the tenants for the following amount pursuant to s. 60 and 65(1) of the *Act* as follows:

Recover the cost for flashing	$1,527.75
Skirting and vapour barrier	$5,470.00
Compensation for noncompliance with agreement	$1,575.00
Filing fee	$100.00
Total amount due to the tenants	$8,672.75

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **$8,672.75.** The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

I Order the tenants to reduce their rent by **$50.00** per month until the landscaping on their yard is completed.

I Order the landlord to to provide legitimate markers showing the true size of the tenants' lot and measurements so accurate quotes can be obtained for landscaping by December 20, 2015.

I Order the landlord to ensure the landscaping is completed as soon as the weather permits in the spring of 2016.

The tenants are at liberty to file a new application for compensation and or the cost of landscaping if the landlord does not comply with this Order.

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 03, 2015

Residential Tenancy Branch