



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1027110 BC LTD (WESTSTONE GROUP)
VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC RP RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* ("the *Act*") for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 60; an order to the landlord to make repairs to the rental unit pursuant to section 55; and an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 58.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenant's Application for Dispute Resolution package sent on November 12, 2015 and the tenant confirmed receipt of the landlord's evidentiary materials submitted for this hearing. Both parties were represented by advocates and the landlord brought two witnesses to the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for loss, particularly to reduce rent for repairs, services or facilities agreed upon but not provided? Is the tenant entitled to an order to the landlord to make repairs to the rental unit?

Background and Evidence

The tenant resides in a manufactured home park operated by the landlord. The landlord testified that there were previous hearings with respect to the matter raised by the tenant in this application. With respect to one previous hearing and the decision dated December 15, 2014, another resident tenant of the manufactured home park had applied for an order that the landlord make emergency repairs and compensate that tenant. The writer of this previous decision found that that tenant should receive some

compensation with respect to loss of essential services including heat, hot water and proper drainage. The arbitrator also ordered that the landlord make repairs with respect to a drainage problem in the park. Other decisions with respect to this matter were less recent (including 2000 through 2007).

The tenant, applicant in this hearing, testified that he has suffered as a result of flooding at the manufactured home park. The tenant testified that his driveway is a "sandpit" and that it is very difficult to move in and out of his home. He testified that the conditions around his home have caused him stress and his trailer actually bounces around when cars drive up and down the nearby highway. He submitted a copy of a bound report prepared in 2000. The report regarding flooding at this manufactured home park stated,

As many of the on-site drainage structures are in questionable condition and do not meet current City standards and practices, and the existing significant creek culvert deficiencies on this private mobile home park pose a severe flooding and safety hazard for several mobile home units in the existing flood plain, a complete solution should be pursued by the property owner.

Any proposed mitigation measures that include the retention of any mobile home units within a potential 1:100 year flood plain cannot be supported.

The conclusions and recommendations section of this report states;

- A minor and major system drainage problem exists;
- Deficiencies including flooding and blockage hazards due to inadequate drainage construction;
- City has requested deficiencies be fixed by owner;
- New, larger drains should be put in place.

The landlord testified that, since the date of that report, work has been done to make the required repairs and improve the drainage system at the park. However, the tenant submitted that the measures taken by the landlord are not sufficient and that he continues to suffer as a result. The tenant provided extensive records as to his communications with the landlord by phone and by email. As well, the tenant provided extensive records that he created himself of flooding issues for many of the tenants on the manufactured home park site.

A copy of a proposal for action by the landlord was submitted as evidence. Written by witness LM, the report concluded that, "[installation] of a new culvert into Quibble Creek is to be undertaken in absence of any flowing water during a dry period where weather

will not hinder the day long construction events....” A copy of a notice provided to all residents by the landlord on July 9, 2015 stated,

Please be advised that we will continue to work on repairing the culvert to eliminate the flooding issue. There were some unforeseeable challenges discovered upon excavating, which need to be addressed before continuing the repair work...

A letter regarding the work done by the landlord echoed the testimony of the biologist (Witness LM) testifying that flood repair work is now complete and that the work was completed in compliance with all relevant legislation. A letter to the residents of the park from the landlord was also submitted for this hearing dated November 2015 and referencing the ongoing work to address debris in the culvert and resulting flooding.

According to the tenant, the steps taken by the landlord have been merely a “band aid fix” instead of a proper repair; that the landlord should be required to provide a completely new drainage system. The landlord, new owners of the property as of 2015 testified that “everything that can be done to repair or fix the problem has been done.”

Witness LM testified that he has worked on behalf of the landlords to ensure any work done to alleviate flooding complies with all relevant legislation and best environmental practices. He testified that, in his opinion, the amount of debris entering the area will continue to result in floods because of the nature of the grounds. Witness LM also stated that since installation of wire mesh around the culvert and other precautionary measures, water is flowing faster in the area near park, and particularly the tenant’s home. He testified very clearly (with a detailed explanation) that difficulties in undertaking further work to rectify the drainage problem arise because of the placement of the tenant’s manufactured home and one other home in that area. He recommended that the culvert be made larger but cautioned that this work would require the moving the tenant’s home. Witness LM (as well as Witness SS) testified that, if the tenant’s home were to be moved, it would likely collapse. The biologist, Witness LM, testified that he personally ensured that the work done at the site followed and met the city requirements as well as all required provincial standards/approvals. He concluded by reiterating separating testimony by Witness SS that all action that can be taken at this point has been taken by the landlord.

Both the on-site supervisor and the landlord testified that they have made the tenant aware that any larger scale work would require moving two manufactured homes (including the tenant’s home) and that the homes would likely be destroyed in an attempt to move them.

Analysis

Each portion of the tenant's claim is grounded in the assertion that the landlords have failed to maintain or repair the manufactured home park so that the tenant is not adversely impacted. Section 26 of the *Manufactured Home Park Act* provides,

26 (1) A landlord must

- (a) provide and maintain the manufactured home park in a reasonable state of repair, and
- (b) comply with housing, health and safety standards required by law.

Policy Guideline No. 1 also addresses landlord obligations with respect to the residential property,

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. ...

In this case, I find that the landlord has provided and maintained the manufactured home park in a reasonable state of repair. It is not disputed that a drainage problem was identified by the authorities. It is not disputed that there has been flooding and other results from flooding at this park. However, the landlord provided evidence, in their documentation and testimony by expert witnesses, that the landlord has made best efforts to resolve the drainage issue and repair the culvert. Both the testimony of the witnesses as well as the documentary evidence show that the landlord's repairs have complied with housing, health and safety standards. The evidence presented showed that the circumstances have improved gradually from previous years.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the loss bears the burden of proof. In this case, the tenant must prove the existence of the loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party.

The landlords have acted in accordance with government orders and I find that they have also acted in compliance with the agreements and the *Act*. The current landlords have not, I find, been neglectfully or intentional in causing any loss to the tenant. The evidence submitted by the landlord (which I accept) is that the drainage issues continue as a result of the nature of the culvert and the area in which the culvert lies.

The tenant sought an order that the landlords provide emergency repairs to the property. The provision under the *Act* with respect to emergency repairs is as follows,

27 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of property in the manufactured home park, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes,
 - (ii) damaged or blocked water or sewer pipes,
 - (iii) the electrical systems, or
 - (iv) in prescribed circumstances, the manufactured home site or the manufactured home park.

... (3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

I do not doubt that there is a need for ongoing work as described by all parties during the course of this hearing. I accept the testimony of the biologist (Witness LM) that there are not any current blocked water or sewer pipes but that the culvert acquires debris which leads to flooding in high water. The landlord has shown that they have made efforts to address the issue as best they can and that they will continue to make what efforts they can. I do not find that the tenant has submitted sufficient evidence that the landlord has failed to act or that the landlord has taken unsatisfactory steps to address this issue. I do not find that the tenant has presented evidence to show the need for emergency repairs. Any indication in the evidence of blocked sewer pipes pre-dates previous hearings and new no evidence has been presented with respect to sewage back-ups. Therefore, I do not find that health and safety are at risk in the current circumstances so that this matter must be urgently addressed.

I dismiss the tenant's application for the landlords to make emergency repairs. It is simply not feasible in the circumstances. I also note that the work would require,

according to the testimony of the expert witnesses as well as the reports prepared related to this park, that the tenant vacate his home and likely lose his home. However, I encourage the landlord to continue to make efforts to improve the conditions at the manufactured home park.

The tenant sought an order that the tenant may be able to reduce his rent for lack of repairs to the culvert and the ensuing water issues. Again, I find the landlord has made efforts to address the issue as best they can. The tenant has shown that there are difficulties at his site but he has not proven that the landlord is responsible (by negligence or maliciousness) for any loss, damage or inconvenience that has occurred as a result of the drainage issue. I dismiss the tenant's application for the landlord to reduce his rent.

Conclusion

I dismiss the tenant's claim in its entirety without leave to reapply.

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 12, 2016

Residential Tenancy Branch

