



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, RP

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order that the landlord make emergency repairs
- b. An order that the landlord make repairs to the unit, site or property.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. I denied the Tenant's request for an adjournment the tenant failed to satisfy me that such an order was appropriate. The delay in presenting evidence was caused by the Tenant. The prejudice to the landlord outweighed any prejudice the tenant might face by proceeding at this time. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by regular mail on May 23, 2017. .

Preliminary Matters:

The hearing was held on June 28, 2017. At that time the tenant advised that she had sent a package of documents to the landlord around the middle of June 2017. The landlord acknowledged receipt of this document. The materials were provided to the Branch. However, they reached the Branch on June 22, 2017 and were not included with the file.

Rule 3.14 of the Rules of Procedure provide as follows:

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

I determined that the hearing should proceed at this time. The landlord had received the materials and he had an opportunity to respond to the materials. However, I advised the parties that I would delay in making my decision until after I had received the materials and considered them. The earliest could receive the materials and make a decision would be in the week of July 10, 2017.

The tenant asked that she be permitted to send in additional materials. I denied this request as the landlord had not been given a copy of the materials and would not be in a position to respond. However, I did permit the tenant to give oral testimony of the materials in her statement. The landlord had an opportunity to respond.

The Branch received an e-mail for a relative/friend of the Tenant indicating that she has been hospitalized for emergency surgery. I determined that as the hearing had been completed that this should not affect the decision making process.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order for emergency repairs
- b. Whether the tenant is entitled to an order for repairs.

Background and Evidence

The tenancy began in July 2015. The tenancy agreement provided that the tenant(s) would pay rent of \$500 per month payable in advance on the first day of each month.

The tenant rents a manufactured home pad. It is located at the base of a hill. The parties agree there is a drainage problem that must be dealt with.

The tenant gave the following evidence:

- She produced a copy of a decision of an arbitrator dated October 14, 2016 where the arbitrator ordered that the landlord obtain an evaluation of the drainage system which includes the retaining wall by a qualified technician or engineer no later than November 15, 2016. Further, the decision states "I order the landlord to make the necessary repairs pursuant to the independent evaluation no later than four weeks following the evaluation. The landlord must use a licenced professional to make the repairs to the drainage system. Should the landlord fail to make the necessary repairs, the tenant may bring further claim against the landlord for loss of use and other appropriate relief."
- The tenant filed a second Application for Dispute Resolution which was heard on February 21, 2017. In that case the tenant's application was dismissed by the arbitrator.
- The tenant testified the landlord misrepresented who he was going to use as the contractor. Prior to the hearing the landlord had the an established firm look at the

slope. After the hearing the landlord advised that he intended to use his uncle as the contracting business.

- The tenant provided extensive evidence of the drainage problems facing the park as it relates to her. It is not necessary to go through this evidence as both parties acknowledge that repairs are needed.
- The tenant has denied the landlord access to the slope behind her stating the landlord has failed to comply with the order.

The landlord gave the following evidence:

- The tenant is denying him access to the rental property and is preventing him from completing the job and putting the entire project at risk.
- He intends to hire his uncle to do the excavation work. His uncle has a business licence and has been doing excavation work for over 44 years.
- The work is under the supervision of a geo technical engineer. The geo technical engineer has withdrawn his services because of the belligerent and obstructive conduct of the tenant.
- It is necessary for the landlord to access the slope through the tenant's property.
- The landlord produced a plan from the geotechnical engineer for the construction of the retaining wall.
- The landlord produced a number of e-mails and other correspondence setting out the landlord's request to gain access to the property and the Tenant's responses.

Analysis

An arbitrator has the jurisdiction to consider those matters that have been properly included in an Application for Dispute Resolution. In this case the Tenant sought an order that the landlord make emergency repairs and/or repairs. That issue was dealt in a previous arbitration and it is not necessary or appropriate to make an order which re-states a previous order. On that basis alone the tenant's application should be dismissed.

In effect the tenant is seeking an order that the landlord comply with the order of a previous arbitrator. I do not have the jurisdiction to enforce a previous arbitrator's order.

The evidence presented by the tenant indicates that she is not happy with the contractor the landlord has chosen to do the drainage work and she is demanding that she be consulted in how this work is to proceed and who is doing this work.

Section 26 of the Manufactured Home Park Tenancy Act provides as follows:

Landlord and tenant obligations to repair and maintain

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

The Act imposes a duty on the landlord to provide and maintain the manufactured home park in a reasonable state of repair and to comply with housing, health and safety standards required by the law. It does not require the landlord to do this in consultation with the tenant or obtain the tenant's approval before proceeding with the work. I do not accept the submission of the Tenant that she has a legal right to be consulted or approve the work.

Further, the tenant submits the landlord has breached the order of the previous arbitrator where it states "The landlord must use a licenced professional to make the repairs to the drainage system." The tenant failed to provide the sufficient evidence to establish that the contractor proposed by the landlord does not meet this requirement. I am satisfied based on the evidence presented that the proposed contractor meets this requirement. He has a business licence and over 40 years of experience in excavations and this type of work.

The work on the retaining wall will be under the supervision of a geotechnical engineer. While, the plans of the geotechnical engineer indicate the "...selection of the permanent drainage area is outside of the Engineer's work scope" the tenant failed to provide sufficient evidence that housing, health and safety standards required by law obligates the landlord to hire an engineer supervise this work or that the failure to have an engineer supervising this work amounts to a breach of the order of the previous arbitrator.

As a result I ordered the application of the tenant by dismissed without leave to re-apply.

The tenant has denied access to the landlord and thus has prevented the landlord from doing the work. I have pasted section 23 of the Manufactured Home Park Tenancy Act to the parties which sets out the rights and obligations of the parties with respect to the landlord's right to enter the manufactured home site.

Landlord's right to enter manufactured home site restricted

23 A landlord must not enter a manufactured home site that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

- (c) the landlord has an order of the director authorizing the entry;
- (d) the tenant has abandoned the site;
- (e) an emergency exists and the entry is necessary to protect life or property;
- (f) the entry is for the purpose of collecting rent or giving or serving a document that under this Act must be given or served.

This decision is final and binding on both parties.

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: July 14, 2017

Residential Tenancy Branch