Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FF, MNDC, OLC, RR

Introduction
This is a joinder application. The Application for Dispute Resolution filed by the each of the Tenants seeks the following:

a. An order for a monetary order in the sum of $5000
b. An order that the landlord comply with the Act, regulation or tenancy agreement
c. An order for tenants are entitled to an order for the abatement of past or future rent and if so how much?
d. An order to recover the cost of the filing fee?

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. Neither party requested an adjournment or a Summons to Testify. 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 filed by each of the Tenants was served on the Landlord by mailing, by registered mail on June 12, 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided
The issues to be decided are as follows:

a. Whether the tenants are entitled to a monetary order?
b. Whether the tenants are entitled to an order that the landlord comply with the Act, regulations or tenancy agreement?
c. Whether the Tenants are entitled to an order for the abatement of past or future rent and if so how much?
d. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

This matter involves 14 tenancies manufactured home park tenancies. The rents vary between $440 and approximately $500 per month. There is a significant variation in the length of time each tenant has lived in the manufactured home park.

On May 5, 2016 an arbitrator issued a order in an application that involved most of the tenants in the manufactured home park requiring the landlord to do a number of things.. Both parties attended that hearing.

On February 9, 2017 I heard an application brought by 8 tenants in the manufactured home park and rendered a decision on February 20, 2016. The landlord failed to attend the hearing. The landlord was ordered to do certain things, each of tenants were awarded a monetary order in the sum of $660 and a reduction of rent was awarded. The landlord's application for review was dismissed.

There is a great deal of animosity between the parties and an unwillingness to work together. The landlord failed to comply with the Act, and Regulations and many parts of the arbitrator's order in a timely manner. Part of that may be due to the landlord's lack of familiarity with the law, his limited command of written English, the rural location of the manufactured home park making it difficult for professionals to attend and the complexities of the work that was required. The problem is further complicated as the landlord failed to attend the hearing on February 9, 2017 and the decision and order was made without the benefit of evidence and submission from the landlord. The tenants expressed frustration about the failure of the landlord to complete what was ordered within the timeframe set out in the order.. The communications between the parties has deteriorated. The tenants in this application do not trust the landlord and view even the positive steps of the landlord with suspicion. I find that the landlord is making efforts to comply with the orders and the Act although those efforts have not been as timely as required.
.
All of the evidence was carefully considered including the evidence and documents of the Tenants and the evidence and documents of the landlord and the landlord's witness.

Application of the Tenant relating to New Issues for the Third Dispute:

I determined it was appropriate to consider the tenant's application relating to new issues first. With respect to each of the Tenants' application identified in the section titled New Issues for the Third Dispute I find as follows:

a. In November 2016 the landlord cut down a number of mature maple trees at the entrance way to the park. This left a pile of rubble, broken branches, rocks and debris which amounted to an unsightly appearance. The landlord testified he cut the trees down to improve visibility for cars getting onto a major road (a safety issue) and as a location to put snow during the snow removal process. There was a delay in removing the debris because the snow and ice did not finally melt until April 2017. I determine the tenants failed to provide sufficient evidence to establish that they are entitled to compensation and that there should be an order relating to the restoration of the area. .
b. The Application for Dispute Resolution filed by the Tenants seeks an order the landlord put siding on a shed on the property. The landlord testified the siding was ordered but took a period of time to arrive. The siding has been placed on the shed. I determined no further orders are required and that the tenants are not entitled to compensation for this claim. .
c. The tenants complained about the landlord's failure to paint both sides of a seed bump. One side was painted in November. The landlord testified he was unable to paint the second side until the spring because of snow and ice. I determined no order was required with respect to this issue and the tenants are not entitled to compensation. .
d. The Application for Dispute Resolution filed by the Tenants seeks an order that the landlord remove collected appliances and other debris. I determined those appliances have been removed. Further, there is no legal basis for the making of such an order and the tenants are not entitled to compensation.

e. The arbitrator in the May 5, 2016 made the following order: "The landlord must ensure that each tenant is informed, **individually**, whenever the water is going to be turned off, or bleach is going to be added to the water system. This notification may be done in person, by phone, or by posting the notice on each tenant's door. In the February 20, decision I ordered that that the tenants were entitled to nominal damages of $50 for each occasion when the water was shut off. The tenants testified the landlord shut off of the water on June 2, 2017 without giving notice as required in the May 5, 2016 arbitration as the landlord limited his notification to posting a notice in the mailbox area. I do not accept the submission of the landlord that it would be too long to give individual notices. He has failed to comply with the May 5, 2017 order. **I determined that each of the tenants are entitled to nominal damages of $50.**

Tenants' Application set out in the Amendment:
The tenants filed an Amendment of August 4, 2017 complaining that the landlord had demanded exorbitant charges (for some up to $12,000) for tenants who were attempting to sell their manufactured home before he would agree to the assignment of the lease. The tenants submit this is extortion as a tenant selling his unit is in a vulnerable position. Further the landlord refused to provide an accounting when requested and is charging late chargers of $3 a day.

I accept the submission of the tenants this is a serious situation. However I determined that I could not make an order with respect to those tenants who paid the inflated charges as that is the subject of an individual application and not a joinder application. I am advised that with respect to at least one of those previous tenants he/she is filing an application for return of the excessive payment.

The landlord submitted the charge of $3 a day late payment was included in the tenancy agreement. I advised the landlord that such a charge is illegal and contrary to section 5 of the Manufactured Home Park Tenancy Act Regulations which provides as follows:

Non-refundable fees charged by landlord

5 (1) A landlord may charge any of the following non-refundable fees:

(a) direct cost of replacing keys or other access devices;

(b) direct cost of additional keys or other access devices requested by the tenant;

(c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;

(d) subject to subsection (2), an administration fee of not more than $25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(e) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

(2) A landlord must not charge the fee described in paragraph (1) (d) unless the tenancy agreement provides for that fee.

The landlord stated he was prepared to provide individual tenants an invoice setting out the charges against the tenant upon request.

As a result I ordered that the landlord provide a tenant an invoice setting out the charges the tenant owes to the landlord within 30 days of receiving a written request from that tenant. :

The landlord is encouraged to obtain legal advice to determine what charges are permissible and what are not.

Application of the Tenants for Compensation and a reduction of rent:
The tenants submit they are entitled to compensation in the sum of $5000 each because of the following:

- The landlord failed to provide peaceful enjoyment of the manufactured home pads contrary to section 32(1) of the Act.
- The landlord has failed to provide and maintain the manufactured home park in a state of decoration and repairs that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant contract to section 26(1) of the Act.
- The landlord failed to comply with the arbitrators orders from the previous decision and should be punished for the failure to comply with the deadlines set out in those orders. .

The Law:
Policy Guideline #16 includes the following:

C. COMPENSATION
The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

…
An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. “

…

D. AMOUNT OF COMPENSATION

> In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. **The amount arrived at must be for compensation only, and must not include any punitive element (my emphasis).** A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

The tenants testified the May 5, 2016 order was served on the landlord on May 18, 2016 by registered mail. They further testified they served the February 20, 2017 order on the landlord by Xpresspost on February 22, 2017.

In considering the tenants' claim for compensation and an order for the reduction of rent I have considered all of the evidence, the submission of the parties and the principles of law applicable including the following:

- In many cases the tenants are show with sufficient evidence that they suffered a loss.
- The tenants seek to punish the landlord for the failure to comply in a timely manner with the arbitrator's orders in the previous arbitrations. An arbitrator does not have the legal authority to impose punitive damages or to punish a party.
- An arbitrator does have the authority to award nominal damages where the tenants have not been able to prove a significant loss but where there has been an infraction of a legal right.
- The tenants were awarded nominal damages for many claims in the decision dated February 20, 2017 where the arbitrator determined the landlord failed to comply with the previous order. As the tenants have been compensated for period up to the date of the decision (February 9, 2017) an arbitrator does not have the jurisdiction to award compensation up that date as they have already been compensated. To award damages up to that date would amount to the tenants being compensated twice for the same claim. .
- An applicant is not permitted to raise an issue that was decided in a previous decision unless they were given liberty to re-apply.
- I determined it was appropriate consider the tenants' application by focusing on the February 20, 2017 order (and referencing the May 5, 2016 where appropriate) rather than considering each order separately. .

The Law:

Section 26(1) 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.

Section 32 of the Act provides as follows:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

…

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Tenants Claims:

(1) Tenants' Claims Relating to the Septic System::

The May 5, 2016 decision made the following orders relating to the septic system:

- "The landlord must have the septic system at the Manufactured Home Park inspected by a qualified professional and have the septic system pumped out if the qualified professional deems it necessary. This is to be completed within two months of receiving this Order.
- The landlord must maintain the septic system, having it pumped on a regular basis as determined by the qualified professional."

In my decision dated February 20, 2017 I determined the tenants failed to provide sufficient evidence to quantify the value of their loss. However, I determined the landlord has breached a legal right owed to the tenants and they are entitled to nominal damages in the sum of $50 for this claim. I further order that the landlord provide the tenants with evidence that he has complied with the following provisions of the provision of the May 5, 2016 order within 30 days of the date of this order.

- "The landlord must have the septic system at the Manufactured Home Park inspected by a qualified professional and have the septic system pumped out if the qualified professional deems it necessary. This is to be completed within two months of receiving this Order.
- The landlord must maintain the septic system, having it pumped on a regular basis as determined by the qualified professional."

If the landlord fails to provide evidence of compliance the tenant's have liberty to file a further Application for Dispute Resolution. .

The tenants testified the landlord failed to comply with the above order by providing evidence that the septic system was inspected by a qualified professional and have the septic system pumped out if the qualified professional deems it necessary.

The landlord gave evidence that he was not able to get the septic system pumped out within 2 months of May 5, 2016 because the contractor was not able to attend. However, the septic system tank contractor

pumped the system October 2016 (prior to the February hearing). The landlord produced the invoice of a contractor dated October 7, 2016 to verify that work.

The landlord also produced a letter from GS Group dated March 25, 2017 that states "System is currently running in good working order. The septic system is a self cleaning waste water treatment plant and has bacteria to break down solids in the first chamber. There is no need to clean this system as it is a lifetime self-cleaning system. If in case of blockage, overflow or backup the system shall be bumped out by owner but otherwise there is no need. System has been maintained regularly and is in great working order."

The tenants question the qualification of GSG. They e-mailed GSG asking whether they pump out/service septic tanks. GSC responded saying they do not pump out septic tanks. I determined this evidence is of little value as it would not be likely the contractor conducting the inspection and the contractor pumping the septic tank would be the same.

However, I determined the landlord failed to present proof that GSC is a qualified professional. The letter does not indicate their qualifications or the type of work they do. I determined the tenants are entitled to nominal damages in the sum of $25 as a legal right has been breached. The landlord still has the obligation to provide evidence to the tenants to establish that GSG is a qualified professional**. I ordered that the landlord provide the tenants with evidence that GSG is a qualified professional to inspect the septic system by October 31, 2017 and if not have the septic system inspected by a qualified professional by that date."**

(2) Tenants' claim with respect to the Fire Hydrant & Fire Extinguishers:

In my decision dated February 20, 2017 I ordered that the landlord provide written confirmation from the inspecting professional to each of the tenants individually that the fire hydrants have been inspected, service and certified within 30 days of the date of this order. If the landlord fails to comply the tenants have liberty to re-apply seeking damages. The tenants submit this should have been completed by March 20, 2017.

He gave evidence that EFP Ltd. Located in Abbotsford came out as quickly as they could and the work was completed June 15, 2017. He provided the invoice from EFP Ltd to verify this.

I determined the tenants failed to provide evidence they have suffered a loss**. However, each is entitled to $50 in nominal damages as the landlord failed to comply within the timeframe set out in the order.**

(3) Tenants claim that the landlord failed to provide a back-up generator:

The May 5, 2017 ordered the landlord to provide a back up generator by July 18, 2016. In my decision dated February 20, 2017 I further determined that the failure to have a back up generator for the water pump has caused a significant reduction in the value of the tenancy on at least two occasions. The tenants are entitled to compensation of $50 for each of those occasions for a total of $100.

The landlord gave evidence that the back up generator for the water system was ordered to be in place in two months of receiving the order. He acknowledged the generator is not in place and was delayed for a number of reasons which was set out in his written submission. It is a much more complicated process

that anticipated and included challenges with getting the appropriate pipe fitter to install a natural gas connection and the construction of a shed to house it. Fortis provided a letter indicating they have scheduled a pipe fitter to do the installation of the natural gas piping for August 14, 2017.

The tenants failed to prove they have suffered a loss. I determined the landlord is making an effort to install the back up generator but it has been more complicated than anticipated. However, the landlord breached the order and each of the applicants **is entitled to nominal damages of $25 for nominal damages for this claim as a legal right has been breached**.

(4) Tenants' claim that the landlord provide copies of tenancy agreements:

I dismissed the claim of the tenants that the landlord failed to provide copies of their tenancy agreements.

In my decision I determined it was not appropriate to make an order relating to this issue as it does not affect all applicants in the same way. If the landlord has not provided a tenancy agreement or has charged a fee for the provision of that tenancy agreement that he has not return each tenant must make a separate claim.

That decision is binding on the parties. It is not appropriate for a party to raise an issue in a subsequent decision has been determined in a previous decision unless they have given liberty to re-apply.

(5) Tenants' Application to post weekly water reports:

The tenants seek compensation for the failure of the landlord to post weekly water report for the Fraser Health Authority as order in my decision dated February 20, 2017. The decision includes the following:

> "The tenants raised the following issues unrelated to the previous order of the arbitrator and seeking the following order:
>
> - At times the level of coliform in the water is unacceptable and they seek an order that the landlord provide them with the report from the qualified professional immediately when this occurs.
> - The landlord have the fire extinguishers inspected and if necessary replaced with they do not comply with fire regulations.
> - The landlord be ordered to hire a fulltime or part time manager on site and hire a snow removal company.
> - The tenants be permitted to use the bulletin board without fear they will be evicted.
>
> The tenants gave the following evidence:
>
> - The tenants have access to the Fraser Health Authority water audit reports on a yearly basis.
> - The landlord is obliged to submit samples of the water supply to the Fraser Health Authority every Monday/Tuesday to be analysed by their lab. The park owner receives a copy of these reports on a weekly basis. The landlord never provides the Tenant with copies of these reports.
> - There is an unacceptable amount of coliform in the water supply as per a result taken from a water sample for unit #3
> - The well should be cleaned by a qualified professional.

> The presence of coliform in the water is of major health concern. I determined that it was appropriate the tenants be given notice as to the results of the tests carried out by the Fraser Health Authority and passed on to the landlord. I order the landlord to post the weekly reports received by the landlord from the Fraser Health Authority on a common bulletin board when received by the landlord. I am not satisfied it is necessary that the landlord provide this report individually to each Tenant.
>
> I determined it was not appropriate to make any further orders with regard to the water system. The Fraser Health Authority is monitoring the water supply on a weekly basis. I am not willing to make any further orders relating to the water system In the absence of expert evidence from the Fraser Health Authority and/or a certified professional who can express an expert opinion as to whether there is a problem with the water system and how best to deal with it. If the tenants obtain such evidence they have the right to re-apply."

The landlord testified he submits water samples on a weekly basis and the Fraser Health Authority would contact him immediately if there was a problem. However, they do not provide him with weekly reports. He produced a letter from the Fraser Health Authority dated February 2017 providing the landlord with the 2016 Range report for the water system and advising him that under section 15(b) of the Drinking Water Protection Act the water supplier must make the results available to the public on an annual basis within 6 months of the end of the calendar year. The report advises the landlord the report must be made available to all users by June 30, 2017.

The order relating to the obligation to provide weekly reports was made on the basis of the tenant's evidence that the landlord received copy of these reports on a weekly basis. This is not accurate. I determined based on the evidence presented in this hearing that the landlord receives the report annually.

I determined it was not reasonable to require the landlord to make the water systems report available on a weekly basis. I determined it was appropriate to vary this part of my decision and order. **I ordered that the order dated February 20, 2017 requiring the landlord to post weekly reports to be replaced by the following: "I order that the landlord comply with the requirements of the Drinking Water Protection Act and the letter from the Fraser Health Authority dated February 2017 in making available the water system report on an annual basis."**

The tenants failed to prove they have suffered any loss. I dismissed the tenants' claim for compensation for the failure of the landlord to provide water reports on a weekly basis.

(6) The tenants application relating to the fire extinguishers was dealt with in (2) above.

(7) Tenants' claim for compensation for new lighting on the electrical shed

The Application for Dispute Resolution filed by the Tenant seeks compensation because the lighting on the electrical shed by Unit #34 was not completed by the deadline of June 18, 2016 given by the arbitrator in the May 5, 2016 decision.

In the hearing before me I made the following determination:

> "The tenants testified the landlord repaired the light with a motion sensor light that only comes on if a car drives past. It is inadequate and has burned out.
>
> I order that the landlord replace the burned out light bulb to the electrical shed within 7 days of receipt of this order.
>
> I dismissed the claim for compensation as there is insufficient evidence that the tenants have suffered a loss. This is not an appropriate case to award nominal damages as the landlord installed new lighting."

The landlord testified the lighting was fixed although 10 days late. The tenants failed to prove they have suffered a loss. I determined that while there has been a breach of a legal right the breach was not significant and the tenants are not entitled to damages including nominal damages.

(8) Tenants' claim for compensation for denial of access to the clubhouse

The previous arbitrator issued the following order relating to the clubhouse:

> "I Order that the landlord supply spare batteries for the lock to the clubhouse and provide an emergency key to be held by the tenant in unit # 26, within 1 week of receiving this Order."

In my decision dated February 20, 2017 "I determined the tenants have been denied access to clubhouse and they are entitled to compensation in the sum of $20 per month for 8 months commencing July 1, 2016 to February 28, 2017 for a total of $160.

The tenants sought compensation because the landlord failed to provide spare batteries for the keypad to the tenant in #41. The landlord disputes this. The tenants have not suffered a loss as they have access to the clubhouse. I do not have evidence from the tenant in #41 as to whether he has spare batteries. I dismissed the tenants' claim for compensation and for nominal damages as they have failed to provide sufficient evidence to prove this claim. . .

(9) Tenants' claim respecting snow equipment:

The tenants sought compensation on the basis that the landlord failed to provide proof of repair or service of the snow removal equipment.

In my decision dated February 20, 2017 I made the following determination

> "I am satisfied based on the evidence presented that the landlord failed to comply with the order of the previous arbitrator and the obligations in the tenancy agreements relating to snow removal. The tenants are entitled to compensation for this failure. In coming to this determination I have recognized there has been an unusual large amount of snow this year and a reduction of compensation has been made to reflect this. In the circumstances I determined the tenants are entitled to damages in the sum of $100 for the failure to remove the snow in a timely manner."

The tenants testified the tractor used for snow removal does not have brakes. It is leaking deiseal and hydraulic fluids. They seek an order the landlord hire a snow removal company to ensure the snow is removed in a timely manner.

The landlord disputes the tenants' allegations about the condition of the tractor. The tractor was used regularly for snow removal during the winter of 2016-2017.

I determined it was not appropriate to make an order that the landlord hire a snow removal company. There was an unusual large amount of snow last winter. I accept the submission of the landlord that it would be difficult to receive prompt service from a snow removal company given the rural location of the park. Further, I determined the tenants failed to prove the snow removal equipment is not working condition. The tenants failed to provide sufficient evidence to prove the allegations that were made. This claim is dismissed.

Other Matters:

There is a dispute between the parties as to who the tenants should contact if there is an emergency. As a courtesy to the parties I have set out section 27 of the Act.

> Emergency repairs
>
> 27 ((2) The landlord must post and maintain in a conspicuous place in the manufactured home park, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

Conclusion: In summary I made the following orders:

"I ordered that the landlord provide a tenant an invoice setting out the charges the tenant owes to the landlord within 30 days of receiving a written request from that tenant."

"I ordered that the landlord provide the tenants with evidence that GSG is a qualified professional to inspect the septic system by October 31, 2017 and if not have the septic system inspected by a qualified professional by that date."

"I ordered that the order dated February 20, 2017 requiring the landlord to post weekly reports to be replaced by the following: "I order that the landlord comply with the requirements of the Drinking Water Protection Act and the letter from the Fraser Health Authority dated February 2017 in making available the water system report on an annual basis."

I ordered the landlord pay to each of the Tenants the sum of $275 which may be applied against future rent particulars are as follows:

Nominal damages for the failure to advise individually that the water was to be shut off	$50
Nominal damages for the failure to provide sufficient evidence that the inspector of the septic system is a professional	$50
Nominal damages for the failure to install a back up generator within the time frame ordered	$25
Nominal damages for the failure to inspect the fire hydrant and fire extinguishers within the timeframe ordered	$50

Cost of the filing fee	$100
TOTAL	$275

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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 Residential Tenancy Act.

Dated: August 28, 2017

Residential Tenancy Branch