Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TIMBERLAND PROPERTIES to protect privacy]

DECISION

Dispute Codes MNDC, RP, RR, FF

Introduction

The tenant applies for an order that her manufactured home site (the "site") be repaired, that her rent be reduced and that she be compensated for storage costs and increased power bills resulting from the landlord's failure to attend to carry out work ordered to be done to the site.

It was agreed at the outset of the hearing that the tenant's landlord is the limited liability company named respondent and not the two individual respondents.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the landlord failed to carry out previously ordered repairs? Has the tenant suffered loss as a result? Is this an appropriate case for an additional repair order or a rent reduction?

Background and Evidence

The history of this matter is a long one. In 2005 a previous tenant of site 115 and the previous landlord of this 161 site manufactured home park were in this same dispute resolution process (file number unavailable) over one of the same basic issues: the stability of the site. It was determined that a portion of the tenant's site, a bank along the site's norther border, was subsiding or slipping away down a bordering embankment. A repair order was issued directing the landlord to secure the embankment.

The work was not done.

The applicant tenant purchased the manufactured home and rented the site from the previous landlord in July 2006 without knowledge of the subsistence problem with the bank or of a substandard foundation for large addition attached to the manufactured home.

The respondent landlord purchased the park in January 2007 without knowledge of the subsistence problem or of the 2005 repair order.

At the time the tenant purchased it, on site, manufactured home came with a large addition extending out to the norther border. The tenant made significant and costly improvements to the addition, turning it into her bedroom, including insulating and drywalling the addition; adding a subfloor; and installing modern flooring.

The bank at the northern border of the tenant's site continued to deteriorate. The addition itself was constructed on shallow concrete footings. The footings had not been emplaced on competent bearing ground. They began to sink and tilt. As a result, the northern side of the addition began to sink and to pull away from the manufactured home.

In the summer of 2016 the tenant, along with three other tenants in the park, applied for dispute resolution regarding the failing embankment. By a decision dated October 24, 2016, Arbitrator K. confirmed that the landlord was responsible for ensuring the stability of the sites rented to the tenants. She made repair orders for each applicant's site.

Regarding this applicant tenant she made the following order:

I order the landlord to:

- Immediately arrange for inspection by and reports from a qualified geotechnical engineer and a qualified civil engineer, (one that is not related to the landlord), at its' expense, that provide recommendations as to how to restore the site to stability and to reinforce/rebuild the footings under the addition so that the addition is level and stable.
- Provide copies of any reports received to the tenant within ten business days of receipt.
- Promptly develop a reconstruction plan based upon the above report, applicable environmental and building regulations, and current building practices and codes. The objective of this plan is to ensure that the

manufactured home site is stable; the addition is level and stable; and there is a proper driveway on the site.

- Obtain all necessary permits for the work.
- Implement the reconstruction plan as soon as possible.

The arbitrator Ms. K. went on to say,

> I have not set actual time limits for most of the measures set out above because of the complexity of the project and the lack of information as to the usual time lines involved in any of them. However, either party may apply to the Residential Tenancy Branch for further direction, including more specific time limits; and/or a rent reduction, if appropriate.

By mid-January 2017, the landlord and this tenant were at an impasse. The tenant made another application (file number recorded on the cover page of this decision). The matter came before me on March 2, 2017. It was agreed that I would consider the previous decision and the submissions of the parties and make a more “up to date” or definitive direction regarding compliance and time lines to see that the tenant’s site is repaired in a timely manner.

As a result of that process I made the following determination:

> I direct that the landlord prepare a repair and remediation plan for the slope, certified by a qualified engineer, setting out the work that, in the engineer’s professional opinion, is required to return the slope to a safe and acceptable state. I direct that the plan be prepared and that a copy of it be provided to the advocate for the tenant by April 30, 2017.
>
> I direct that the work required in the repair and remediation plan be completed no later that August 31, 2017. If the work in not completed by that time, the tenant may apply for a monetary order or rent reduction or rent redirection as appropriate.
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> It is assumed that the work will meet all applicable codes and bylaws and be conducted with all necessary permits in place. I make no order requiring an ecological assessment. That is a requirement to be imposed by local, provincial or federal governments and it is implicit that in carrying out the work the landlord will comply with any such laws, codes, regulations or directives imposed by any of those levels of government.

> The question of a rent reduction was raised, however, for the reasons set out by the previous arbitrator I decline to award a rent reduction at this time. Even had the previous arbitrator's order been complied with perfectly, work cannot be undertaken until the weather is dryer. Though the landlord has not perfectly complied with the order of the previous arbitrator, it has proceeding with some diligence and, I consider, it has a good faith intention to resolve the problem of the slope; a problem both it and the tenant appear to have inherited without forewarning.

The landlord has obtained engineering reports and has provided them to the tenant. The work has not been done.

The tenant has been directed by the landlord not to use her addition and to empty it of items in order to reduce its weight on the unstable ground under the footings. She has rented a storage locker and is keeping her belongings there. She seeks the cost of that storage. The landlord consents to that claim. She has removed a wood burning stove from the addition and claims her electrical heating bills have increased greatly for the want of the stove. She seeks compensation for that. She claims that the lack of stability to her site has caused her anxiety. She worries that her entire manufactured home might slip down the slope. She seeks compensation for that.

The tilting of the addition has caused it to break away from its connection to the tenant's manufactured home. There is a gap where the roofs meet, admitting moisture into the addition and into the manufactured home, resulting in mould. The tenant has been sleeping on a chesterfield in another room for some time. She is eighty years old and suffers from Parkinson's disease.

Ms. D.A. for the landlord states that the work is much more complicated and expensive than first thought. She indicates that work on the slope descending from the northern border of this tenant's site cannot be properly done until the manufactured home located on the site at the bottom of the slope (site 114, rented by another of the tenants who previously applied) is moved.

The landlord is waiting for development permits from the local government to allow the moving of the manufactured home on 114 and on another affected site; site 113.

Mr. S.H. for the landlord states that all the contractors who might be engaged to do the work are presently booked. As well, significant alterations to the park's power supply system will be required in order to accommodate the moving of 114.

In cross examination, Mr. S.H. was asked why the addition's footings could not be stabilized now, before work to restore the bank. He answered that the north side of the tenant's addition cannot be stabilized ahead of the work on the slope, according to his engineer, nor could the addition be temporarily stabilized with jacks.

Analysis

Slope Stability

The evidence does not establish that the deterioration of the slope at the north side of the site poses any risk to the tenant's manufactured home.

Addition Footings

It is far from clear that the underpinning and thereby stabilization of the footings for the addition requires the prior stabilization of the slope. Despite Mr. H.'s comments during questioning, the engineer's report of December 20, 2016 appears to treat the slope deterioration problem separate form the footings settling problem. The report indicates that "it should be feasible to underpin the footings with concrete down to competent bearing, as directed by a geotechnical engineer." There is no suggestion that "competent bearing" ground is not already there, at some depth.

In his report of March 14, 2017 the engineer indicates that the December 2016 proposal involving stabilization of the slope with boulders and shot rock and underpinning the addition footings would be "very expensive and very challenging." The engineer did not elaborate. In the report the engineer proposes simply removing the tenant's addition and trimming the slope to a stable grade and vegetating it. Assumedly, this would involve the top of the slope being cut back into the existing level portion of the site, where the addition is presently located, thus not only eliminating the addition but also reducing the area of the level portion of the site.

This change in the plan is a significant one and would assumedly result in the loss of living area in the tenant's home and loss of some useable area on her site. It is should properly be made with the tenant's advised agreement.

It should be noted that it is my impression from the hearings I have adjudicated regarding the stability problems in this park, that the landlord had been proceeding with acceptable diligence. It had stepped into a major problem, not of its own making, and has and is proceeding to correct it. It is not clear that the landlord has maintained the same diligence since the engineer's report of March 2017.

Nevertheless, the dispute is fundamentally a contractual one; the tenant has rented a site from the landlord that should be stable and it is not.

Whatever the difficulties the landlord has faced in the process to remedy the current state of the tenant's site, the tenant has been suffering damage and inconvenience as a result of the unsatisfactory state of the site. The landlord is responsible for that loss and inconvenience.

The tenant seeks specific damages, outlined in a Monetary Order Worksheet, and a rent reduction.

From the Worksheet she seeks:

Hydro Bill

The tenant says that because she has had to forego her woodstove in the addition, her Hydro bills have increased. The evidence presented by the tenant does not permit a determination that her Hydro costs have jumped with the loss of use of a woodstove. A series of comparable bills, or at least some evidence about them would have been helpful. Nor is there evidence to permit a determination of how much the wood to fuel the woodstove might have cost or that it is less costly than electrical heating or what amount of savings the tenant has achieved by not having to heat the addition as though it was a useable room.

I dismiss this item of the claim. The tenant has not proven a loss.

Storage

I find that that the failure of the addition footings has rendered the addition as a place unsafe for the tenant to store her belongings. As a result she has been obliged to rent a storage locker at a cost of $1010.08 for the period October 2016 to August 2017 and at

a cost of $179.24 per month thereafter. I award the tenant $1727.04 for the cost of the locker to and including December 2017. The landlord has indicated a willingness to assume the cost of the locker and so I will leave it to the tenant to obtain reimbursement of the $179.24 per month after December 2017, but with leave for her to apply to recover that money if the landlord's reimbursement is not forthcoming.

Rent Reduction

I find that the as a result of the instability of her site the tenant has lost the use of her 10 x 30 foot addition. It was a room she had finished to the level of an interior room in a house, with drywall, lighting and modern flooring. The room had been her bedroom and, with the woodstove, a central feature of her home.

I find that the tenant is entitled to a significant reduction in the rent that she pays for the site. Until the footings for the addition are repaired, the addition levelled and re-secured to the manufactured home and approved as a living space by the relevant authority, or until any settlement otherwise is reached by the parties, I direct that the tenant's rent be reduced by $250.00 per month, effective September 1, 2017.

The tenant will have a rent rebate award of $1000.00 for the months September to December 2017.

In granting this rent reduction I have taken into account the fact that the tenant has been compensated directly for the loss of the addition as a place to store her belongings.

Other

The tenant has requested an order for emergency repairs in her application. The evidence before me does not permit a determination of what those repairs might be, other than the repairs already ordered in the previous decision.

Insofar as repairs order in the previous decision, those repair orders stand as valid orders, directing the landlord to attend to securing the footings of the addition and making the slope safe from deterioration.

Regarding repairs or emergency repairs to the manufactured home or addition, it is not clear in the tenant's application nor in her evidence what the repairs might actually be. I make no order for repairs or emergency repairs. The tenant is free to re-apply in that regard and I grant her any leave she may require in order to do so.

The tenant in her “Impact Statement” has described her frustration with the process and the emotional disturbance it has and is causing her. In my view she has not clearly advanced a claim for emotional distress or inconvenience and so I give no consideration to it.

Conclusion

The tenant is entitled to a monetary award of $2727.04. There is no claim for recovery of any filing fee. She will have a monetary order against the landlord in the amount of $2727.04. She is free to recover the award by offsetting it against rent as it comes due.

The tenant’s rent is reduced by $250.00 per month. She has recovered that reduction for the months September to December 2017 and so the reduction will begin, practically, with the January 2018 rent.

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 23, 2017

Residential Tenancy Branch