Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened in response to an application by the tenant pursuant to the *Manufactured Home Park Tenancy Act* (the "Act") for Orders as follows:

- a monetary award for loss under the tenancy agreement pursuant to section 60 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenant's application for dispute and evidentiary package. I find that the landlord was duly served with these documents in accordance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award?

Background and Evidence

The tenant provided undisputed testimony that this tenancy began in November 2011 and ended in June 2017. Rent was $251.53 at the conclusion of the tenancy, after rising from $225.00 in August 2016.

The tenant said that he was seeking a monetary award of $15,577.16 which represented a return of rent for the entire length of his tenancy. The tenant said that the landlord had failed to provide him potable water as is required by law. The tenant cited section 7 of the *Health Hazards Regulation* and sections 5 & 6 of the *Drinking Water Protection Act* as evidence that the landlord had failed to provide him with potable water

during the course of his tenancy. Section 7 of the *Health Hazards Regulation* says that "potable water" has the same meaning as in the *Drinking Water Protection Act* and that "a landlord must not rent a rental unit that is not connected to a water supply system unless the landlord can provide the tenant with a supply of potable water for domestic purposes." Section 5 of the *Drinking Water Protection Act* defines "potable water" as being water provided by a domestic water system that meets the standards prescribed by regulations and is safe to drink and fit for domestic purposes without further treatment. Section 6 states, "subject to the regulations, a water supplier must provide, to the users served by its water supply system, drinking water from the water supply system that is potable and meets any additional requirements established by the regulations or by its operating permit."

As part of his evidentiary package, the tenant supplied various notices from the regional district which he provided to show that the well-water the landlord supplied was not fit for human consumption. These notices accessed from the Interior Health website, note that the property is subject to a boil water notice. Additionally, the tenant argued that landlord did not have adequate certification to run a well on the property and that ecoli was present in the well. The tenant said a boil water advisory had been present on the property since 2011, even though a new well was dug approximately three years ago.

The landlord disputed that the water was not potable and said that the new well was "good" and that he had completed a well operator course when the new well was dug. The landlord said that he enjoyed a good relationship with the regional health inspector and that the health inspector had no concerns with the quality of the water. The landlord said that non-potable water is defined as water that is affected by a spill from diesel or gas, while water subject to a boil water advisory is safe for consumption after it has been boiled. The landlord said that he tests the water every three months and tested the water one time per month, for three months, following the installation of the new well. The landlord dismissed the presence of e-coli in the water and said if the tenant's concerns were well founded, the health inspector would have informed him.

The tenant questioned the frequency of the landlord's testing and stated that the photos he submitted in his evidence were proof that no testing had taken place over the winter as no foot prints had disturbed the snow. The landlord disputed this account, arguing that no time stamps were present on the photos and that he did not even know where on the property the photos were taken.

Analysis

Section 60 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 damage or loss bears the burden of proof. The claimant must prove the existence of the damage/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. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove their entitlement to a claim for a monetary award.

The tenant argued for a return of the rent he had paid for the entirety of his tenancy. The tenant said that the landlord had failed to meet adequate health and safety standards because the water supply was subject to a boil water advisory. Section 26(1) of the *Act* states, "A landlord must provide and maintain the manufactured home park in a reasonable state of repair and comply with housing, health and safety standards required by law."

The landlord maintained that the park was kept in a state of repair that complied with health and safety standards and argued that a boil water advisory did not mean that the water could not be consumed. The tenant claimed that because of the boil water notice, the landlord was in breach of section 5 of the Drinking Water Protection Act. Given that the tenant has argued the boil water notice means the drinking water supplied by the landlord did not meet statutory standards, I found it necessary to check these matters of public record to which the tenant referred during the hearing.

Section 1 of the *Drinking Water Protection Act* [SBC 2001] defines "potable water" as "water provided by a domestic system that (a) meets the standards prescribed by regulation and (b) is safe to drink and fit for domestic purposes without further treatment." Standards for potable water are established under the *Drinking Water Protection Regulations*, specifically in Schedule A. This Schedule provides information on detectable levels of total coliform and e-coli but makes no mention of a boil-water advisory.

"Immediate reporting" is required under section 9 of the *Regulations* if the quality standards in Schedule A are not met for the parameters in fecal coliform bacteria or e-coli. Section 9 of the *Regulations* goes on to say:

Immediate reporting is not required if a water sample that failed to meet the immediate reporting standards was collected from a location in the water supply system before the water is treated for the removal or inactivation of pathogens, is not used for domestic purposes or ***is water for which a public advisory to boil for drinking water has been issued.***

After considering the oral testimony of both parties, and after having reviewed the evidence submitted, along with the guidelines concerning potable water provided by the Provincial Government, I find that the tenant has failed to demonstrate under section 60 of the *Act* that the water provided to the manufactured home park site was not potable. I accept that the water was subject to a boil water advisory; however, the information provided by the BC Government supports the landlord's contention that boiled water is potable. The information provided by the BC Government says a boil water advisory is used when "the nature of the threat is one that can be effectively addressed by boiling the water." While I understand the inconvenience associated with boiling water, I find that the tenant has failed to show that the landlord did not provide potable water as required by the *Act*.

Conclusion

The tenant's application for a monetary award is dismissed 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: June 27, 2018

Residential Tenancy Branch