



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

RP

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking repairs to a manufactured home site.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant’s advocate (the “Advocate”) and the Tenant’s assistant (the “Assistant”) as well as an agent for the Landlord (the “Agent”), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised concerns about the service of the Application, the Notice of Hearing, or the documentary evidence before me for consideration in the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision will be sent to them in the manner requested in the hearing.

Preliminary Matters

At the outset of the hearing the Advocate requested additional time to submit documentary evidence on behalf of the Tenant for my consideration, such as photographs and videos of the Manufactured Home Park and site. The Advocate stated that there was a miscommunication regarding who was supposed to submit which documents and as a result, many documents they intended to rely on were not submitted.

I advised the Tenant, the Advocate and the Assistant that section 3.14 of the Rules of Procedure states that documentary and digital evidence that is intended to be relied on at the hearing must be received by both the Residential Tenancy Branch (the “Branch”) and the respondent not less than 14 days before the hearing to allow the respondent time to review and consider it prior to the hearing.

Although rule 3.17 of the Rules of Procedure allows for the acceptance of late evidence in particular circumstances, given the nature of the evidence described and the reason provided for its lack of submission, I find that the evidence referred to by the Advocate either existed, or could reasonably have been obtained, well in advance of the hearing. As a result, I find that it would be significantly prejudicial to the respondent, who has waited a number of months for this hearing to take place and complied with the service requirements of the Rules of Procedure, to allow the Tenant more time to submit documentary evidence which, given due diligence, could reasonably have been submitted on time.

As a result, the Advocate's request for additional time to submit documentary evidence on behalf of the Tenant was denied and the hearing proceeded based on the documentary evidence before me and the testimony of the parties in the hearing.

Issue(s) to be Decided

Are repairs to the manufactured home park, the manufactured home site, and the Tenant's manufactured home required to be made by the Landlord pursuant to sections 26 and 7 of the *Act*?

Background and Evidence

Both parties were in agreement that a tenancy exists and that the Tenant rents a mobile home site in the manufactured home park at a monthly rental rate of \$350.00 per month. While both parties provided significant testimony in relation to this matter, for the sake of brevity I have summarized only the relevant evidence and testimony below.

The Tenant, the Advocate, and the Assistant stated that the Tenant's manufactured home site is located at the lowest point/grade in the manufactured home park and that due to improper planning, building, and maintenance of the park, the manufactured home site experiences significant water runoff from other more elevated areas of the manufactured home park. The Tenant, Advocate, and Assistant argued that this runoff is eroding the soil beneath the Tenant's manufactured home, resulting in structural issues. As a result, the Tenant is seeking repairs to the manufactured home site and the manufactured home park to reduce or eliminate the water runoff in her mobile home site, as well as structural repairs to the mobile home caused by the soil erosion.

The Advocate provided statistics for rainfall in the area and stated that Canadian law states that no water is allowed to flow from one property to another, however, he did not submit or point to any documentary evidence in support of this testimony. The Advocate also provided significant testimony relating to the nature of the issue, the possible remedies, and negative the impact the paving of the Tenant's driveway and some surrounding driveways had on the water runoff issue.

In support of the Tenant's Application the Advocate pointed to a three page home inspection report regarding structural damage to the home and soil erosion, as well as a quote for the cost of footing repair and levelling of the mobile home.

The Agent disputed that there is a water runoff issue in the Tenant's mobile home site stating that a berm and a ditch exist across from her mobile home site specifically to prevent such an issue. While the Advocate acknowledged that these exist, he stated that they are improperly built and positioned and therefore do not stop the water runoff as intended. The Agent argued that the Tenant has failed to provide sufficient documentary evidence to support her claim and called into question the validity and reliability of the home inspectors report. The Agent also argued that there is no evidence from a qualified professional such as a geologist or a structural engineer to support the Tenants testimony. Further to this the Agent argued that it is possible that the structural issues noted by the Tenant are caused by improper setting and positioning of the mobile home in the mobile home site, something over which the Landlord has no responsibility or control. As a result, the Agent stated that the Landlord is not responsible to make any repairs to the manufactured home site, the manufactured home park, or the Tenant's manufactured home itself.

The Agent denied that the manufactured home was improperly set and stated that no geological survey or report from a structural engineer has been obtained as he was advised by the home inspector that any such reports would be unnecessary to ascertain the cause of the soil erosion as it is obviously caused by water runoff from other areas of the manufactured home park.

Analysis

Section 26 of the *Act* states that 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. Section 7 of the *Act* also states that if a landlord or tenant does not comply with the *Act*, regulation, or tenancy agreement, the non-complying party must compensate the other for any damage or loss that results.

Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. This means that the Tenant, who is the Applicant in this matter, bears the burden of proof to satisfy me that the repairs sought to the manufactured home site and the manufactured home park and the manufacture home are required and the responsibility of the Landlord to complete pursuant to section 26 of the *Act*.

Based on the totality of the testimony and documentary evidence before me for consideration in this matter, I find that, for the following reasons, the Tenant has failed to satisfy me that the repairs sought are either required or the responsibility of the Landlord pursuant to section 26 of the *Act*.

Both parties provided significant affirmed and contradictory testimony in relation to whether repairs are required and whose responsibility it is to complete any required repairs. Although the Tenant claims that water erosion due to the position of their manufactured home in the manufactured home park and the Landlord's failure to properly mitigate water runoff from surrounding areas of the manufactured home park are causing foundation problems, damage to the rental unit, and structural problems, the only documents submitted by the Tenant in support this claim were a three page report from a home inspector dated April 28, 2018, an invoice for the inspection, and a quote for the removal and reinstallation of skirting, as well as footing repair and levelling of the manufactured home.

Although the report from the home inspector states that there appear to be structural issues with the mobile home as a result of settling, and that it is apparent that water runoff from the street and another driveway are being funnelled under the mobile home, he provides no details about how he came to this conclusion. I find this particularly troubling given that earlier in the report he noted that the weather was clear, warm, and dry on the date of the inspection, meaning that he could not possibly have personally observed water from those areas being funnelled under the manufactured home at the time of the inspection. I also note that instead of making a finding that the previously referred to water runoff has indeed caused the aforementioned structural issues; the inspector stated the following in their report:

"The constant streaming of water directly under the front footing has likely undermined the soil structure and allowed the footing to collapse and the subsequent settling of the structure."

Based on the wording used by the inspector in their own report, it appears to me that the inspector only suspects, but has not in fact verified or proven, that water runoff is the cause of any soil settling and structural issues. Further to this, the Landlord made allegations that the home inspector is not qualified to make the findings given in the report and I note that no qualifications for the inspector have been provided either in the report or in the documentary evidence before me for consideration. As a result, I have concerns over whether the report has been authored by a professional qualified to determine the nature and cause of soil erosion and structural issues. In any event, as stated above, I also have concerns over the quality of the report itself given the lack of details regarding how the conclusions drawn in the report were reached. As a result of the above, I am not satisfied that this report, even if authored by a professional qualified to make such findings of fact, shows that any structural issues with the manufactured home are indeed the direct result of water runoff from other areas of the manufactured home park.

Further to this, I find the significant lack of documentary evidence from the Tenant in support of her Application detrimental to her claim and ultimately I find that the Tenant has failed to satisfy me, on a balance of probabilities, that the repairs sought by the Tenant to the manufactured home site, the manufactured home park, and the manufactured home itself are either required

or the responsibility of the Landlord pursuant to section 26 of the *Act*. As a result, I dismiss the Tenant's claim without leave to reapply.

Although I believe this decision to have been rendered within 30 days after the conclusion of the proceedings in accordance with section 77(1)(d) of the *Act* and the *Interpretation Act*, in the event that this is incorrect, I note that section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if it is given after the 30 day period in subsection (1)(d).

Conclusion

The Tenant's Application 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 *Residential Tenancy Act*.

Dated: September 17, 2018

Residential Tenancy Branch