



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAYER ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, RP, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- an Order for emergency repairs, pursuant to section 27;
- an Order for regular repairs, pursuant to section 26; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 65.

The landlord, tenant C.W. (the "tenant"), a law student advocating for the tenant ("counsel"), and the law student's supervising lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Counsel stated that the landlord was served the notice of dispute resolution package by registered mail on October 19, 2018. Counsel provided the Canada Post Tracking Number to confirm this registered mailing. The landlord confirmed receipt of the dispute resolution package on October 19, 2018. I find that the landlord was served with this package on October 19, 2018, in accordance with section 89 of the *Act*.

Preliminary Issue- Service of Landlord's Evidence

The landlord testified that he did not serve his evidence on the tenants.

Section 3.15 of the *Residential Tenancy Branch Rules of Procedure* (the "Rules") states that the Respondent's evidence must be received by the Applicant and the Residential Tenancy Branch not less than seven days before the hearing. In this case, the landlord

testified that his evidence was never served on the tenants, thereby breaching rule 3.15. I find that since the landlord's evidence was not served on the tenants, the landlord's evidence is excluded from this proceeding.

Issue(s) to be Decided

1. Are the tenants entitled to an Order for emergency repairs, pursuant to section 27 of the *Act*?
2. Are the tenants entitled to an Order for regular repairs, pursuant to section 26 of the *Act*?
3. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 65 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began prior to the landlord purchasing the subject property in 2002 and is currently ongoing. Monthly rent in the amount of \$507.55 is payable on the first day of each month. A written tenancy agreement was signed by the tenants and the previous landlord and a copy was submitted for this application.

Counsel for the tenants submitted that the tenants' manufactured home sits at the foot of a rocky hillside and that rocks from this hillside fall into the tenants' yard and between the rocky hillside and the wheel chair accessible walkway that allows access into the manufactured home. Photographs showing a pile up of small rocks in the yard and beside the wheel chair accessible walkway were entered into evidence.

Counsel for the tenants submitted that the tenants are concerned that the rocky hillside is unstable and that larger rocks might fall onto the tenants and or the tenants' manufactured home.

Counsel for the tenants submitted that the landlord has not maintained the manufactured home park in a reasonable state of repair so as to prevent injury to the

tenants and the tenants' manufactured home, contrary to sections 26(1)(a) and 26(1)(b) of the *Act*.

Counsel for the tenants submitted that the tenant has suffered and continues to suffer mental distress relating to the falling rocks and fears that they will strike her or the manufactured home. Counsel submitted that this violates the tenant's right to quiet enjoyment under section 22(b) of the *Act*.

Counsel for the tenant stated that the tenants are seeking the following:

- an Order, under section 55(3) of the *Act*, that the landlord hire an engineer to prepare a report in writing as to the present condition of the rocky hillside;
- an Order, under section 55(3) of the *Act*, that any recommendations, by the engineer, be implemented by the landlord;
- an Order, under section 55(3) of the *Act*, for the landlord to maintain the tenants' lease pad and surrounding area free from fallen rocks;
- an Order, under section 55(3) of the *Act*, for the landlord to maintain the area around the tenants' lease pad in a reasonable state of repair.

Counsel for the tenant submitted that the tenant has lived on the subject rental site since February of 1995 and that rocks have been falling down the rocky hillside since she moved to the subject rental site. The tenant has been attempting to have the landlord assess the stability of the rocky hillside since 2004. Counsel for the tenant entered into evidence the following communications from the tenants' legal representatives to the landlord:

- Letter dated October 27, 2017 demanding the landlord address a number of concerns, including the rocky hillside;
- Letter dated November 28, 2017 which stated that the landlord agreed to hire an engineering crew to perform an assessment on the stability of the rocky hillside in the spring.
- Letter dated May 31, 2017 which requested an update as to whether an engineering assessment had been arranged.

Counsel for the tenant submitted that the tenant must clear away the accumulated rocks from the bottom of the slope nearly every week. The affidavit of the tenant which was entered into evidence stated that the tenant has noticed an increase in the quantity of rocks falling into her property.

The landlord testified that the rocky hillside is not a danger to the tenants or the tenants' property and that it is just a component of the topography of the land. The landlord testified that the rocky hillside is composed of shale and that when it rains, water seeps

into the cracks in the rocks and when the water freezes, small pieces of the rock flakes off and falls down the slope. The landlord testified that this is a natural process that does not degrade the stability of the hillside.

The landlord testified that the removal of the pieces of rock from the pad sites is the responsibility of the tenants as part of their maintenance responsibilities. The lease agreement entered into evidence states: "Tenant must keep and maintain his or her Lot and Home in a safe condition". The landlord testified that the tenants' lot extends to the top of the rocky slope. The landlord testified that the rocks that fall down the slope are not large and only require removal once or twice per year.

Analysis

Section 27 of the *Act* states that "emergency repairs" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of property in the manufactured home park, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes,
 - (ii) damaged or blocked water or sewer pipes,
 - (iii) the electrical systems, or
 - (iv) in prescribed circumstances, the manufactured home site or the manufactured home park.

Sections 26(1) of the *Act* states that 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 testimony of the parties in regard to the safety and stability of the rocky hillside is conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the tenants have not met the burden of proof on a balance of probabilities that the condition of the rocky hillside breaches a housing, health or safety standard required

by law. I find that the tenants have not proved that the rocky hillside is in dis-repair or is dangerous. Consequently, I find that the tenants have failed to prove that the landlord has breached section 26 or 27 of the *Act*.

As per the evidence submitted by tenant's counsel, the rocks have been falling from the rocky hillside since the tenant moved onto the subject rental site, that being approximately 23 years ago. The tenant did not provide any evidence or testimony that the debris has ever caused harm to either person or property, this lends credence to the landlord's submission that the flaking rocks is part of the topography of the property and is not a danger to the tenants or their property. While the tenant's affidavit states that the tenant has noticed an increase in the quantity of rocks falling in her backyard, the tenant has not entered any documentation into evidence which links the increased rock fall to decreased stability in the hillside.

Since the tenants' have not met the required burden of proof, I dismiss their application without leave to reapply.

As the tenants were not successful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 65 of the *Act*.

Conclusion

The tenants' 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 *Manufactured Home Park Tenancy Act*.

Dated: November 13, 2018

Residential Tenancy Branch