Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PORT4HOMES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, FFT, OLC, PSF, RP

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on January 10, 2019 (the "Application"). The Tenant applied as follows:

- For an order that the Landlord make emergency repairs;
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement;
- For an order that the Landlord provide services or facilities;
- For an order that the Landlord make repairs; and
- For reimbursement for the filing fee.

A.G. and J.H. appeared at the hearing for the Tenant. The Representative, J.W. and J.W. appeared at the hearing for the Landlord. I explained the hearing process to the parties and answered their questions in this regard. A.G., J.H. and the Representative provided affirmed testimony.

Pursuant to rule 2.3 of the Rules of Procedure (the "Rules"), I heard the Tenant's request for emergency repairs and repairs. I will also consider reimbursement for the filing fee. The remaining issues are dismissed with leave to re-apply. This does not extend any time limits under the *Manufactured Home Park Tenancy Act* (the "*Act*"). The Representative asked that these matters be dismissed without leave to re-apply; however, I declined to do so given I did not hear the matters or make a determination on them.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Representative confirmed she received the hearing package and Tenant's evidence and raised no issues in this regard. A.G. confirmed she received the Landlord's evidence and raised no issues in this regard.

During the hearing, it was determined that the Landlord submitted a written tenancy agreement that was not provided to A.G. or J.H. Rule 3.15 of the Rules requires a respondent to serve their evidence on the applicant. I find the Landlord did not comply with rule 3.15 in this regard. The parties took different positions on the written tenancy agreement during the hearing and therefore I find service of this document necessary in the circumstances. I have not considered the written tenancy agreement as I find it would be unfair to A.G. and J.H. to do so when they have not had an opportunity to review it.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord make emergency repairs?
2. Is the Tenant entitled to an order that the Landlord make repairs?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Application is in the name of the estate of the Tenant. A.G. testified that the Tenant was J.H.'s mother and that the Tenant passed away February 4, 2018. She testified that she is J.H.'s sister. A.G. testified that her and J.H. inherited the Tenant's estate. A.G. testified that J.H. is the executor.

The Representative advised that she does not accept A.G. as a tenant in relation to the site but accepts that she is acting as representative for J.H.

There was no issue that there was a tenancy agreement between the Tenant and Landlord in relation to the site. Both parties agreed the tenancy started in 1987. As noted above, the parties took different positions about the written tenancy agreement that had been submitted. The parties took different positions about the terms of the tenancy agreement.

A.G. sought an order that the Landlord remove six trees from the site. She asked that this be done by the arborist who did the Basic Tree Risk Assessment Form. A.G. asked that this be done within 30 days provided the arborist could do it within this timeframe.

I also understood A.G. to seek either a report or removal of other trees in the park but not on the site. A.G. confirmed these other trees were not on common areas in the park but on other sites rented by other tenants. A.G. submitted that the *Act* gives the Tenant the right to request that the Landlord address issues in the entire park if there is a safety risk. She relied on section 26 of the *Act*. A.G. also said this is stated in a Policy Guideline of the RTB; however, she was unable to point me to which Policy Guideline states this.

The Representative submitted that this matter had been addressed in a previous file, the number of which is noted on the front page of this decision.

The decision from the previous file indicates that A.G. submitted that the Landlord had failed to maintain the trees within the park and refused to maintain the trees on the site (page 2). A.G. submitted that the trees are a safety issue (page 2). The Tenant had applied for emergency repairs to be completed (page 1).

The Arbitrator ordered the Landlord to have an arborist attend the site to inspect the trees within 30 days. I understand the order to state that the Landlord is to follow any recommendations of the arborist to ensure the trees do not pose a health or safety risk (page 2). The decision was issued December 17, 2018.

At this hearing, the Landlord submitted an email dated January 7, 2019 from an I.S.A. Certified Arborist. It states that the trees are in good health. The arborist recommended cutting ivy from one of the trees. The arborist also recommended that two of the trees be monitored and looked at again next year. The arborist states that there is currently no sign of failure upon visual inspection.

The Landlord submitted photos showing the ivy was removed as recommended. I understood A.G. to acknowledge that the ivy was removed.

The Landlord submitted text messages between the Director of Operations and arborist. The Director of Operations sent the arborist a text stating he is looking to confirm that no trees on the site are dangerous or represent an immediate risk. The arborist sent a

text back stating he had looked at the trees. The text states that the trees have outgrown their area but other than that are “pretty healthy”.

I understand from the email and texts that the arborist attended the site around December 18, 2018.

On January 9, 2019, A.G. had an I.S.A. Certified Arborist attend the site and complete a ISA Basic Tree Risk Assessment Form. The arborist who did this is from the same company as the arborist used by the Landlord who attended the site around December 18, 2018.

I understand the Tree Risk Assessment to show that the trees pose an extreme risk. The only recommended mitigation option is full removal of the six trees. Further, the second arborist sent an email stating the trees are a disaster in the making.

The Tenant submitted photos which state they show damage to the site and home. I note that similar photos were submitted for the prior hearing.

Analysis

After hearing from the parties, and upon a further review of the prior decision, I agree this matter has been dealt with. The Tenant sought emergency repairs at the first hearing. This related to the trees in the park and on the site. The Arbitrator determined that the order outlined above addressed the issues raised.

Based on the text messages and email from the first arborist, I accept that the Landlord complied with the order. The Landlord had a certified arborist attend the site and inspect the trees. The arborist did this within 30 days of the order. Further, the Landlord followed the recommendation of the arborist to remove ivy from one of the trees. This is shown in the photo submitted by the Landlord. A.G. did not dispute this.

I note that the order from the previous hearing did not require the Landlord to use a specific arborist or have that arborist complete a specific report. These requirements would have been included in the order if they were determined to be necessary.

The Tenant suggested in the Application that the Landlord did not have an arborist attend to determine whether the trees pose a health or safety risk. I do not accept this position as it is clear from both the text messages and the email itself that the arborist was checking the trees to determine whether they posed a risk.

Less than a month after the order was issued, the Tenant filed the Application. The Tenant is again seeking emergency repairs and repairs in relation to trees in the park and on the site.

I acknowledge that the health and safety of trees may change over time. I do not find that the Tenant is precluded from ever raising this issue again because of the previous hearing and decision. However, in my view, there needs to be some material change in circumstances or passage of time before issues of this nature are raised when they have already been dealt with through arbitration.

Here, there has been no reasonable passage of time. The Application was filed within a month of the previous decision and order. Further, I am not satisfied there has been a material change in the circumstances such that the Tenant is permitted to seek the same repairs again.

I acknowledge that the Tenant has obtained a Tree Risk Assessment since the last hearing. However, it was the Tenant's onus to prove they were entitled to the repairs sought at the last hearing. If the Tenant thought a Tree Risk Assessment was necessary to show that the trees need to be removed, the Tenant should have obtained this prior to the last hearing and submitted it as evidence.

Parties cannot be permitted to file further applications for dispute resolution seeking the same repairs simply because they have obtained stronger evidence that the repairs are required. This is the equivalent of permitting parties to re-argue issues that have already been dealt with and decided upon.

I do not see anything in the evidence that satisfies me the situation with the trees has changed between December, when the prior order was issued, and now.

I acknowledge that the Tenant submitted photos in relation to damage to the water line and roof. The photos are not sufficient to satisfy me that there is an issue with the water line. Nor do I accept that this is a new issue as the photos appear similar to the photos submitted at the prior hearing. In relation to the roof, the damage shown does not satisfy me that there is an issue with the trees such that they pose a health or safety risk.

Nor can I be satisfied that the Tree Risk Assessment Form demonstrates a material change in the circumstances. The parties submitted two different opinions about the

trees, both from certified arborists, both of whom work for the same company. I do not accept that the opinion provided by the Tenant should be given more weight because it is on a Tree Risk Assessment Form rather than in an email. It is not clear to me from the evidence submitted that the second arborist did a more thorough assessment than the first. Neither arborist was called as a witness at the hearing. The Tenant has the onus to prove the claim. In the absence of an explanation as to why two certified arborists working for the same company provided two completely different assessments of the same trees, I am not satisfied the opinion of the second arborist should be accepted over that of the first arborist.

A.G. submitted that the Tenant is permitted to seek repairs and maintenance to trees on other sites within the park. A.G. confirmed she is not seeking repairs to trees in common areas of the park. A.G. relied on section 26 of the *Act* for this position. She also said it is stated in the Policy Guidelines.

Section 26 of the *Act* states:

> 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 26 of the *Act* requires the Landlord to maintain the entire park which would include all sites and common areas. However, this section does not entitle the Tenant to seek repairs or maintenance to other sites in the park. The Tenant is entitled to seek repairs and maintenance to their site and common areas of the park. Further, the Tenant would be entitled to seek repairs or maintenance to other sites if such repairs or maintenance were required for the Landlord to maintain the Tenant's site. This may apply where something on another site poses a risk to the Tenant on their site. However, this is not the situation the Tenant presented. The Tenant sought tree assessment and maintenance on other sites within the park unrelated to the Tenant's site. The Tenant has no standing or authority to do so.

I am unsure which passage in the Policy Guidelines A.G. is relying on for the position that the Tenant can seek repairs and maintenance to other sites. Policy Guideline 1,

which sets out the obligations of the parties in relation to maintaining the property, does not state that tenants can seek repairs or maintenance for other tenants on other sites. I am unable to find a statement in the Policy Guidelines that supports A.G.'s position.

Given the above, the request for emergency repairs and repairs in relation to the six trees on the site and trees on other sites in the park is dismissed without leave to re-apply.

All other requests are dismissed with leave to re-apply. This does not permit the Tenant to file a further application for dispute resolution seeking removal or maintenance of the six trees on the site, or trees on other sites in the park, under a different section of the *Act* as these issues have been addressed.

Given the Tenant was not successful, I decline to award the Tenant reimbursement for the filing fee.

Conclusion

The request for emergency repairs and repairs in relation to the six trees on the site and trees on other sites in the park is dismissed without leave to re-apply. I decline to award the Tenant reimbursement for the filing fee. All other requests are dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 08, 2019

Residential Tenancy Branch