



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, RP, RR, FF

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Manufactured Home Park Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 60;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 55;
- an order requiring the landlord to make repairs to the rental unit, pursuant to section 27;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 58; and
- authorization to recover the filing fee for this application, pursuant to section 65.

The male tenant did not attend this hearing, which lasted approximately 52 minutes. The female tenant ("tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that she had permission to represent the male tenant as an agent at this hearing (collectively "tenants").

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence package. In accordance with sections 81, 82 and 83 of the *Act*, I find that the landlord was duly served with the tenants' application and the tenants were duly served with the landlord's evidence package.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to make repairs to the rental unit?

Are the tenants entitled to an order to allow them to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

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

Both parties agreed to the following facts. This month-to-month tenancy began on July 30, 2010. Monthly rent in the amount of \$398.00 is payable on the first day of each month. A written tenancy agreement was signed by both parties. The tenants continue to reside at the manufactured home site ("pad"). The tenants own their manufactured home ("trailer") and rent the pad from the landlord.

The tenants seek a monetary order of \$17,448.00 plus the \$100.00 filing fee paid for this application. The tenants also seek for the landlord to remove the tree limbs from the ground in the driveway at the rental property, to cut back the long tree limb from the large tree hanging over their driveway, and to stop the neighbours' dogs from defecating on their rental property.

The tenants seek \$100.00 per month for a three-year period (rather than since 2011 when the issues began) for a total of \$3,600.00 for having to clean up dog feces of other neighbours' dogs defecating on the rental property. The tenant said that she cleans up two times per day, it was stressful, she did not take any time off work, but she bought a feces scooper for \$20.00 and packs of 50 doggy bags for \$10.00 in order to clean. She

said that she thought \$10.00 per day was fair and it worked out to \$100.00 for 30 days in a month.

The tenants seek \$13,848.00 for a loss of quiet enjoyment as a result of the dog feces and harassment from neighbours at the rental property. The tenant said that she was only claiming for a refund of the tenants' full monthly rent for the last three-year period, rather than since 2011 when the issues began. She said that the landlord was talking behind her back about her personal life to the neighbours and that this was libel and slander. She claimed that she is not allowed to talk to the neighbours about their dogs as recommended by the police because the neighbours make threats towards her. The tenant referred to two videos provided of dogs defecating at the rental property.

During the hearing, the landlord agreed to trim the long tree branch from the large tree hanging over the tenants' driveway in the next couple of months. He claimed that it was not his obligation to do so but he wanted to help the tenants.

The landlord disagreed with removing the tree limbs from the ground in the driveway at the tenants' rental property. He pointed to page 5 of the parties' written tenancy agreement, which he said the tenants signed and initialled each page, and page 9 of the Park Rules, which he said state that it is the tenants' obligation to deal with landscaping, trees, lawn and shrubs at the rental property.

The landlord claimed that he did all he could to talk to the neighbours and he provided them with written notices to keep their dogs off the tenants' rental property. He said that he cannot watch the dogs and see where they defecate every day. He stated that he was told by other occupants that the tenants' dogs defecate on their lawns, which the tenant denied during the hearing.

The landlord disputed the tenants' entire monetary claim. He said that it snowed every day for the last three weeks and he did not see dog feces in the tenants' yard. He said that since 2015 and 2016, he had not heard any complaints from the tenants until March 2018. He stated that when he spoke with the male tenant on December 15, 2018, he did not know that the tenant had any issues with the landlord, he said everything was ok, and he wished him a "merry Christmas." He maintained that when he spoke with the male tenant on February 1, 2019, the male tenant said that he would deal with the tenant and the landlord found out that both tenants later got into a fight. He explained that when he called the male tenant at his work on March 6, 2019, shortly before this hearing on March 14, 2019, the male tenant did not know about this monetary application. The tenant disputed that she did not tell the landlord earlier regarding the

dog feces, she pointed to the emails between the parties, and said that the landlord was lying and of bad character.

Analysis

I order the landlord to trim the long tree branch from the large tree hanging over the tenants' driveway in the next couple of months. The landlord agreed to do so during the hearing.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the tenants' application without leave to reapply.

I dismiss the tenants' application for the landlord to remove the tree limbs from the ground of the driveway at the rental property. The written tenancy agreement, which was signed and initialled by the tenants of their own free will, indicates that the landscaping, including the trees, lawn and shrubs, are the responsibility of the tenants, not the landlord, at the rental property. Therefore, the tenants are required to deal with the tree roots in the ground of the driveway.

I dismiss the tenants' application for the landlord to stop the neighbours' dogs from defecating in the tenants' yard. The landlord has already issued written notices and verbal warnings to the neighbours. The landlord cannot control the neighbours' dogs.

Pursuant to section 60 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the tenants' entire monetary claim for \$17,448.00. I find that the tenants failed all four parts of the above test. The tenants provided insufficient evidence that they are entitled to full months' rent return for a full three-year period, while living at the trailer and the pad the entire time. The RTB does not have jurisdiction to deal with

harassment, libel and slander claims, as I mentioned to the tenant during the hearing. The tenant did not show how cleaning up dog feces or dealing with the neighbours or their dogs caused her to suffer stress or other losses; she did not provide medical records or other documentary evidence of same.

The tenants did not provide receipts for the costs of \$3,600.00, including for the feces scooper, the doggy bags or any other items as a result of cleaning up dog feces. The tenant did not miss time off work or prove any other losses as a result of cleaning up dog feces. She did not justify how she was entitled to \$100.00 per month for cleaning over a three-year period.

As the tenants were mainly unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I order the landlord to trim the long tree branch from the large tree hanging over the tenants' driveway in the next couple of months.

The remainder of 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: March 20, 2019

Residential Tenancy Branch