Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding R&B WILLIAMSON HOLDINGS and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, MNDCT, FFT

Introduction

This hearing originally convened on April 5, 2019 and was adjourned to May 23, 2019 due to time constraints. This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 60;
- 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's representative (the "landlord"), the tenant and the tenant's advocate 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's advocate testified that the landlord was served with the tenant's application for dispute resolution on February 28, 2019 via registered mail. The Canada Post Tracking number was provided to evidence this registered mailing. The landlord testified that she received the tenant's application for dispute resolution but could not recall on what date. I find that the landlord was deemed served with the tenant's application for dispute resolution on March 5, 2019 in accordance with sections 81 and 82 of the *Act*.

The tenant's advocate testified that the landlord was served with the tenant's amendment on March 18, 2019 via registered mail. The Canada Post Tracking number was provided to evidence this registered mailing. The landlord testified that that she received the tenant's amendment but could not recall on what date. I find that the landlord was deemed served with the tenant's amendment on March 23, 2019 in accordance with sections 81 and 82 of the *Act*.

Preliminary Issue

Both parties agreed to the following facts. This tenancy began on June 1, 2003 and ended by way of an Order of Possession for unpaid rent issued by the Residential Tenancy Branch on January 24, 2019. The January 24, 2019 Decision was entered into evidence.

As this tenancy has ended I find that the landlord is under no obligation to repair the manufactured home park on the tenant's application. I therefore dismiss the tenant's application for repairs.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 60 of the *Act*?
2. Is the tenant 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 tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. Monthly rent in the amount of $293.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Tenant's Testimony

The tenant's advocate submitted that the tenant is seeking the following monetary compensation:

- Value of manufactured home in the amount of $17,600.00;
- Cost of alternative accommodation in the amount of $3,901.00; and
- Hydro bills paid while the tenant's manufactured home remained empty: $753.45.

The tenant testified to the following facts. On February 19, 2017 a sewage backup occurred in his manufactured home at approximately 10:00 a.m. The tenant tried to solve the back up with a plunger, but this did not work. The tenant then started bailing the sewage out of his toilet with a pot and threw it outside. The tenant attempted to call management but was not able to get a hold of anyone except the “water man”. The water man is employed by the landlord to deal with water related issues. The water man attempted to help the tenant bail the sewage, but he was old and was not able to render much assistance.

The tenant testified to the following facts. The tenant asked the water man to turn off the water to the manufactured home park because each time someone in the manufactured home park flushed, sewage backed up into the tenant’s manufactured home. The water man did not turn the water off for several hours. The tenant called a plumbing company, and someone attended at approximately 6:30 p.m.

The plumber snaked the line and found that there was a blockage in the same place as a blockage was found in 2010 which also resulted in damage to his manufactured home. The tenant testified that during the 2010 incident, he had insurance which covered the cost of remediating his manufactured home. The tenant alleged that had the sewer line been properly fixed at that time, the 2017 leak would not have occurred.

The tenant testified that the sewer line was repaired a few days after the February 19, 2017 leak. After the line was repaired the landlord informed the tenant that it was his responsibility to install a backflow line.

The tenant testified to the following facts. The tenant did not have insurance. The physical backup of sewage caused significant damage to the tenant’s manufactured home. After the sewage back up the tenant cleaned up as best he could with soap and water but did not hire a professional to clean up the sewage because he could not afford one.

The tenant entered into evidence a report dated February 27, 2019 from a restoration company which states that the sewage backup caused damage to the bathroom, bedroom, hall and crawlspace. The report did not provide an estimate for the repair of the manufactured home. The report states that the landlord did not follow proper clean up protocol by failing to put a layer of poly overtop of the hydrated lime which was used to treat the sewage spill. The report states that the landlord lay down hydrated lime

without a layer of poly which allowed the hydrated lime to become airborne. The report states that airborne hydrated lime can cause irritation to eyes, skin, respiratory system and gastrointestinal tract.

The tenant testified to the following facts. In addition to the physical damage, since the back up occurred, sewage gases have filled his manufactured home, rendering it impossible to live in. The tenant had his furnace intake removed from under his manufactured home as it was drawing in the sewer gas and hydrated lime which made him sick. The tenant moved the furnace intake to the side of the manufactured home which this prevented the hydrated line from being sucked into the furnace; however, it did nothing to prevent the sewage gases from entering the manufactured home. The tenant moved out of the manufactured home in late May of 2017.

The tenant entered into evidence a note from his family doctor dated February 4, 2019 which states:

> The patient is suffering from irritation in the eyes, cough with phlegm and frontal headache that has started with the sewer gas that is a result of the backed up sewer.
>
> On examination: both eyes are congested with surrounding erythema around the eye lids and forehead. Chest is clear.

The tenant's advocate testified that the tenant does not have any reports or other documentation stating that sewage gasses are entering the tenant's manufactured home.

The tenant testified that he had a real estate agent attend at his manufactured home to determine if it could be sold. The tenant entered into evidence a letter from the real estate agent which states in part:

> If I were to list this property today I would list it between $15,000 and $18,000. However, in the homes current state, with the smell of sewer in the home, it would not be able to be listed for sale.

The tenant entered into evidence a copy of his 2019 Property Assessment Notice which states that the tenant's manufactured home has an assessed value of $17,600.00.

The tenant testified that due to the sewage backup, he could not live at the subject rental property and was forced to move out. The tenant submitted into evidence hotel

receipts from February 2018 to February 2019 totaling $3,901.00. The tenant is seeking the landlord to reimburse him for the cost of his hotel stay which resulted from the sewage backup.

The tenant testified that after he moved out of his manufactured home he had to keep the heat on over the winter to prevent the pipes from freezing. Since he had to pay this expense when he was not living in his manufactured home the tenant is seeking to recover $295.83 in BC Hydro charges from July 2018 to December 2018 and $457.62 in Fortis BC charges from July 2018 to February 2019. No BC Hydro or Fortis BC bills were entered into evidence. The tenant entered into evidence a screen shot of his online payment to BC Hydro and Fortis BC.

Landlord's Testimony

The manager of the subject rental park testified to the following facts. She was at home on February 19, 2017 when the sewage backup occurred. The water man informed her of the issue and the water was turned off shortly thereafter. At the time she was made aware of the sewage backup, the tenant had already called a plumber and arranged for the plumber's attendance at the subject rental property.

The landlord testified that she paid for the plumber's attendance on February 19, 2017 and entered into evidence a copy of the receipt for the plumber's attendances on both February 19 and 21, 2017. The landlord testified that the plumber was able to unclog the tenant's line and that she had another company attend at the subject rental property on February 27, 2017 to repair the sewer pipe under the home. A receipt for same was entered into evidence.

The landlord testified that the tenant complained about the smell of the soil around the area of the sewage line and so she had the soil removed and new soil laid down. The landlord testified that the tenant continued to complain about the smell so she hired a contractor to deal with the matter and the contractor lay down hydrated lime. The landlord testified that she had a petty cash receipt dated March 2, 2017 for this expense but did not have a receipt from the contractor. The tenant testified that it was a different manager from the manufactured home park who lay it down.

Both parties agreed that the landlord paid for the tenant to stay at a motel for two nights following the sewage backup.

The manager testified that after the sewage line was fixed she offered to help the tenant clean his manufactured home, but he refused, insisting that the smell was coming from outside, not inside his manufactured home. The tenant denies receiving offers of assistance.

The landlord testified that sewer gasses are not venting into the tenant's manufactured home and that the smell comes from the tenant's failure to properly clean the affected areas after the original sewage back up. The landlord testified that the tenant did not act responsibly by failing to have insurance and failing to properly clean the manufactured home after the sewage incursion.

Analysis

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 26 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.

I find that the landlord acted reasonably by having a plumber attend at the subject rental property on the same date as the sewage backup occurred and by having the sewer line repaired shortly thereafter. I find that the landlord did not breach section 26 of the *Act* because they acted quickly and reasonably to address the sewage backup and repair the sewer line.

I find that the fact that a sewage backup happened approximately 7 years prior in the same location does not prove that the landlords knew of an issue and refused to have it

fixed, resulting in the current damage. I find that the occurrences are too far removed in time to be connected. I find that the tenant has failed to prove how the landlord breached the *Act,* regulation or tenancy agreement regarding the sewage backup.

As I have found that the tenant has failed to prove that the landlord breached the *Act*, regulation or tenancy agreement, I find that the tenant's monetary claim for damage to his manufactured home, his hydro bill and hotel costs fails.

Furthermore, Policy Guideline 5 states that where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided. I find that the tenant failed to mitigate the damage to his manufactured home by failing have home insurance and by failing to properly clean the manufactured home at the time of the sewage back up.

I find that the tenant has failed to prove that the repair work completed resulted in sewer gases leaking into his manufactured home. I accept the tenant's testimony that the sewage backup damaged his manufactured home; however, I have found that he landlord is not liable for this damage as they acted quickly to repair the sewer line.

I note that the tenant provided testimony on the effect the sewer back up and resulting clean up methods had on his health; however, the tenant's application for dispute resolution and amendment did not make a claim for non-pecuniary damages for his ill health, nor did the tenant request to amend his claim during the hearing. I therefore decline to consider if the tenant is entitled to non-pecuniary damages arising out of this tenancy.

As the tenant was not successful in his application, I find that he is not entitled to recover the $100.00 filing fee from the tenant, pursuant to section 65 of the *Act*.

Conclusion

I dismiss the tenant's application 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: May 23, 2019

Residential Tenancy Branch