



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR MNRT MNDCT FFT

Introduction

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

- An order to reduce rent for repairs/services/facilities agreed upon but not provided pursuant to section 58;
- A monetary order for cost of emergency repairs pursuant to section 27;
- A monetary order for damages or compensation pursuant to section 60; and
- Authorization to recover the filing fees from the landlord pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed she received the landlord's evidence. The landlord confirmed he received the tenant's Notice of Dispute Resolution Proceedings, the tenant's evidence and the amended application, however he denies receiving the respondent instructions for dispute resolution; the dispute resolution process fact sheet (Residential Tenancy Branch-114) the notice of hearing or access codes to call into the hearing. The landlord also testified the amendment attachments he received had no file number associated to it. The landlord testified he went to a Service BC office to obtain the documents he required to respond to the tenant's dispute and attend the teleconference hearing.

The tenant testified she sent the required documents together with the Notice of Dispute Resolution Proceedings by registered mail on April 1, 2019. The tracking number is provided on the cover page of this decision. She acknowledges there was some confusion about the file numbers and the different mailings she had sent out because

she had originally filed this dispute with another tenant in the mobile home park believing it could be joined with hers.

Preliminary Issue

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure (“Rules”) say the applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a. the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b. the Respondent Instructions for Dispute Resolution;
- c. the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d. any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*].

Rule 3.5 indicates that at the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Rule 6.1 says the arbitrator will conduct the dispute resolution process in accordance with the Act, the Rules of Procedure and principles of fairness. The landlord acknowledged he received the tenant’s application for dispute resolution, the amendment and her evidence. The landlord was able to upload evidence, attend the hearing and sufficiently assume the role of a respondent during the hearing. Although I was not satisfied the tenant/applicant complied with Rules 3.1 and 3.5, I found the principles of fairness would not be jeopardized if I were to conduct this hearing despite the landlord denying receiving the Respondent Instructions for Dispute Resolution and the dispute resolution process fact sheet (RTB-114). I find the landlord was sufficiently served with the Notice of Dispute Resolution Proceedings and evidence in accordance with section 64 of the Act.

While I have turned my mind to all the documentary evidence, including invoices, letters and e-mails, and the testimony of the parties, not all details of the respective

submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Issue(s) to be Decided

Is the tenant entitled to:

A rent reduction?

A monetary order for cost of emergency repairs?

A monetary order for damages or compensation?

Authorization to recover the filing fees from the landlord?

Background and Evidence

The tenant gave the following testimony. There was a previous decision of the Residential Tenancy Branch whereby her rent was reduced by \$18.75 per month commencing July 2015 until 'the water issues are rectified and clean water flows to the rental unit'.

Half of the manufactured home park had their pipes replaced in January of 2016 and the landlord advised her that rent was going back to regular rates. The tenant testified she should have been paying the reduced rent from January 2016 to December 2018, since the water quality remained bad during this time. The tenant claims a reduction of \$712.50 for this, a period of 38 months.

The tenant testified the local health authority gave the landlord a 'boil water advisory' after the fresh water pipes were installed in half the park, since there was no valve installed preventing the water from the 'old' pipes from contaminating the entire fresh water supply. The tenant provided copies of the letters from the local health authority dated December 2017 and October 2018 as evidence to corroborate this. The tenant acknowledges the boil water advisory was lifted in December 2018.

On April 23, 2019, the tenant noticed her toilet wouldn't flush properly. She notified the landlord that her septic tank was full and required draining. The septic was drained the following night. After the septic tank was drained, the tenant noticed sewer problems still existed. The tenant testified there was sewage backing up into her shower.

The tenant called the landlord who advised her he had the septic pumped, there should be no further problems and that given time, any blockage should subside. After the phone call, believing this was an emergency, the tenant called a plumbing company herself to have it fixed. The plumbing company spent an entire day trying to locate the blockage and was able to clear the blockage. The tenant paid the plumbing company's bill in the amount of \$735.00 which she supplied as evidence.

The tenant testified she emailed the landlord about the issue before calling the plumber, however no copy of the email was provided.

The tenant seeks \$500.00 for cleaning of appliances as there is residue left in her appliances from the time she was on well water. She testified the work was previously done in accordance with the previous arbitrator's order, however she wants it done once again as her appliances are not clean. No documentary evidence was provided to corroborate this claim by the tenant.

The landlord provided the following testimony. Between July 2015 and October 2015, the tenant had her rent reduced by \$18.75 per month in accordance with the arbitrator's order. In October 2015, the tenant's well water supply was replaced with municipal water, along with 59 other pads in the manufactured home park, satisfying the previous arbitrator's conditions. Another 60 or so pads in the park are still on well water. Due to the expense of replacing the lines for the remaining pads, the two sections of the park with different water supplies were separated by a valve in December of 2018. The landlord testified that the section of the park where the tenant lives had their boil water advisory cancelled in December 2018 by the local health department.

The landlord testified he never received two calls from the tenant regarding the septic issue. He acknowledges he had the septic drained after the phone call on April 23rd, and that he got another call from the tenant after the septic was drained, however there were no other calls made or emails sent to him. He testified he told the tenant that right after draining, it would take a while for blockages to subside; all the tenant had to do was wait a little while.

The landlord testified that if he had received another call from the tenant, he would have sent his handyman to fix the septic issue or call a different plumbing company to take a look because the one chosen by the tenant without his knowledge is incompetent and expensive. The landlord testified it would have cost him between \$50.00 and \$100.00 to clear the septic blockage with his handyman or approximately \$350.00 to fix it using

his preferred, reputable plumbing company. He was not given the opportunity to fix it because of the tenant's actions.

Analysis

The tenant did not provide any evidence or provide testimony regarding a future ongoing rent reduction. The tenant testified she seeks in her application a rent reduction from the period of January 2016 to December 2018. Therefore, her application for an ongoing rent reduction pursuant to section 58 of the Act is dismissed.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the Act, regulations or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss

- Boil Water Advisory claim

With the letters from the local health authority, the tenant has provided compelling evidence to show the entire manufactured home park, which includes her own pad, was subject to a boil water advisory as at December 2017. The landlord has not provided any compelling evidence to contradict the tenant's letters from the local health authority or the tenant's testimony. In returning the tenant's rent to normal while not providing clean water to the rental unit, I find the landlord was in contravention of the previous arbitrator's decision to reduce rent until *'the water issues are rectified and clean water flows to the rental unit'*.

The landlord and tenant both agree the boil water advisory was lifted in December 2018. As the tenant has not provided any compelling evidence to show there was any boil water advisory before December 2017, she is entitled to a rent reduction for each of the twelve months between December 2017 and December 2018 in the amount of \$18.75 per month. ($\$18.75 \times 12 = \225.00). I issue a monetary order in the tenant's favour in the amount of **\$225.00**.

- Claim for cleaning of appliances

The tenant has not provided any documentary evidence of any damage to her appliances, nor substantiated it with compelling testimonial evidence. I am not satisfied of the existence of the damage or loss (point 1 of the 4 point test) and I dismiss this portion of the claim.

- Claim for emergency repair (blocked septic)

Policy Guideline PG-1 states:

The landlord is responsible for emptying a holding tank that has no field and for cleaning any blockages to the pipe leading into the holding tank except where the blockage is caused by the tenant's negligence. The landlord is also responsible for emptying and maintaining a septic tank with a field.

Section 27(1)(c)(ii) defines a damaged or blocked water or sewer pipe as an emergency repair.

Section 27(3) of the Act states:

A tenant may have emergency repairs made only when all of the following conditions are met:

- a) emergency repairs are needed;
- b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

In this case, the tenant testified she called the landlord to advise him that after the septic tank had been emptied, she still had problems with the toilet flushing and backflow coming into her shower. Despite this, the tenant testified she made one call to the landlord and emailed him regarding the issue before calling in a plumber on her own. She gave no testimony that she advised the landlord she was going to do so, or gave him any opportunity to call the plumber of his choice. Though she testified she sent an email, none was provided as evidence.

Section 27(3) clearly states the obligations of the tenant to have an emergency repair made includes making two attempts at calling the landlord by telephone and giving the landlord a reasonable time to make the repairs. I find the tenant has done neither of those. In light of this, I find the tenant has denied the landlord the opportunity to make the emergency repairs. The tenant found her own plumber and paid for the service on

her own. The tenant has failed to show any violation of the Act, legislation or tenancy agreement on the part of the landlord. I dismiss this portion of the tenant's claim.

As the tenant's claim was only partially successful, I do not order a recovery of the filing fee.

Conclusion

I issue a monetary order in the amount of \$225.00 in favour of the tenant.

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: June 3, 2019

Residential Tenancy Branch