Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HYGGE HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, MNDCT, OLC, PSF, RR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on July 05, 2019 (the "Application"). The Tenants applied as follows:

- 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 required by the tenancy agreement or law;
- To reduce rent for repairs, services or facilities agreed upon but not provided;
- For compensation for monetary loss or other money owed; and
- For reimbursement for the filing fee.

The Tenants attended the hearing with Legal Counsel. Nobody attended the hearing for the Landlord. I explained the hearing process to the Tenants and Legal Counsel who did not have questions when asked. The Tenants provided affirmed testimony.

The Tenants provided their correct full legal names which are reflected in the style of cause.

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

Legal Counsel advised that the hearing package and evidence were served on the Landlord by registered mail July 10, 2019. Legal Counsel advised that the package was sent to the Landlord at the address noted for them on a notice to end tenancy previously served on the Tenants and on the Notice of Rent Increase submitted as evidence. Legal Counsel provided Tracking Number 1. I looked this up on the Canada Post

website which shows the package was delivered July 11, 2019. The website indicates a signature is available although it does not provide the delivery confirmation.

Legal Counsel advised that he received correspondence from counsel for the Landlord August 14, 2019 with evidence for the hearing attached. The Landlord submitted evidence for the hearing August 16, 2019.

Based on the submissions of Legal Counsel regarding service as well as the Canada Post website information, I find the Landlord was served with the hearing package and evidence in accordance with sections 81(c) and 82(1)(c) of the *Manufactured Home Park Tenancy Act* (the "*Act*"). The Landlord submitted evidence for the hearing which supports that the Landlord received the hearing package. I also find the Tenants complied with rule 3.1 of the Rules of Procedure (the "Rules") in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenants and Legal Counsel were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence of the Tenants, oral testimony of the Tenants and submissions of Legal Counsel. I have only referred to the evidence I find relevant.

I have not considered the Landlord's evidence given the Landlord failed to attend the hearing and present it as required by rule 7.4 of the Rules.

Issues to be Decided

1. Are the Tenants entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement?

2. Are the Tenants entitled to an order that the Landlord provide services or facilities required by the tenancy agreement or law?

3. Are the Tenants entitled to a rent reduction for repairs, services or facilities agreed upon but not provided?

4. Are the Tenants entitled to compensation for monetary loss or other money owed?

5. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The Tenants sought the following monetary compensation:

1	Cancelled cheque x 2	$36.00
2	Registered mail fees	$21.00
3	Occupation of common area	$350.00
4	Failure to remove snow	$50.00
5	Unlawful rent increase	$342.00
6	Filing fee	$100.00
	TOTAL	**$899.00**

A written tenancy agreement was submitted as evidence. It is with the previous owner of the site. Tenant C.G. testified that the tenancy started December 02, 2006 and is a month-to-month tenancy. Legal Counsel confirmed rent has been $749.00 since April 01, 2019 pursuant to the Notice of Rent Increase in evidence.

Tenant C.G. submitted an Affidavit (the "Affidavit"). It states that the current Landlord purchased the manufactured home park in February of 2015.

Legal Counsel and the Tenants provided the following submissions and testimony in relation to the issues raised.

Cancelled cheque x 2 and registered mail fees

Legal Counsel confirmed the following from the materials submitted. At a previous hearing on File Number 1, the arbitrator permitted the Tenants to deduct money from future rent. The Tenants contacted C.C. asking that he return a rent cheque so they could re-issue one that reflected the deduction. C.C. refused to do so. C.C. could easily have done so as he is often on site. The Tenants had to cancel the cheque which incurred a fee. The Tenants also incurred a fee sending the new cheque by registered mail.

The Tenants sought compensation for the fees incurred given the Landlord's non-compliance with the previous decision. The Tenants also sought compensation for similar fees they believe they will incur if they are permitted to deduct from future rent in this decision.

The Affidavit states in part as follows. Tenant C.G. asked C.C. to return their August 2018 rent cheque so she could re-issue another one that reflected the deduction. C.C. refused to do so. The Tenants stopped payment on the cheque which cost $18.00. The Tenants sent the new cheque by registered mail which cost $10.50.

The Tenants submitted the decision on File Number 1 in which the arbitrator permitted the Tenants to deduct $550.00 from future rent.

The Tenants submitted an email in which they asked C.C. to return their August rent cheque so they could replace it with one that reflects the deduction permitted by the arbitrator in the decision on File Number 1. C.C. replied that they will "be in a position to move forward" once the Tenants have done certain tasks.

Occupation of common area

Legal Counsel submitted as follows. One of the common areas in the manufactured home park is directly outside the Tenants' home. The Landlord has been parking large amounts of equipment in this common area since August of 2018. This is shown in the photos submitted. The photo at page 44 of the materials was taken in August of 2018. The Landlord is doing this to bully and harass the Tenants. The Landlord has not moved the equipment despite requests to do so.

Tenant C.G. testified that the Landlord has put a cement block on the Tenants' driveway. Tenant C.G. further testified that the Tenants and other tenants of the park used the common area to play games, have BBQs and have park gatherings. She testified that the Landlord tore the area up such that they have to be careful walking in the area. She testified that there are other areas the Landlord could put the equipment but C.C. chooses to use the common area in front of their home. She said the Tenants want the equipment removed.

Legal Counsel submitted that the Landlord is breaching section 21 of the *Act* by restricting services or facilities without providing a corresponding rent reduction.

Legal Counsel submitted that this is also a breach of section 22 of the *Act* and the Tenants' right to quiet enjoyment which includes use of common areas. He submitted that the equipment is a "visual disturbance". He also submitted that it is a safety hazard. I understood him to say that the equipment would block emergency vehicles that may require access to the area.

Legal Counsel submitted that $350.00 in compensation is appropriate. He said this is calculated based on $30.00 per month for the last year that the common area has been obstructed.

The Affidavit states in part that the Landlord has had a large truck parked on the common area in front of the Tenants' home since spring of 2018.

The Tenants submitted photos of the equipment and cement block.

Failure to remove snow

Legal Counsel submitted as follows. Snow removal has been provided and paid for since the tenancy started in 2006. The Notice of Rent Increase submitted indicates snow removal is included in rent. All previous Notices of Rent Increase have also indicated this. It snowed in February. The Landlord plowed part of the road leading up to the Tenants' site but not all of it. The Landlord left a section of the common area unplowed. There are photos of this submitted. There are email communications regarding this submitted.

Legal Counsel submitted that this is a breach of section 21 of the *Act* as the Landlord has not provided a service. He submitted that the Landlord cannot restrict this service without reducing rent.

The Tenants sought $50.00 for the inconvenience of not having the snow removal service. Legal Counsel advised that the Tenants could not get over the snow and had to remove it themselves. Legal Counsel advised that there was snow for 10 days and that the Tenants had to deal with it during this time.

The Affidavit states in part the following. It snowed in February 2019. The Landlord plowed most roads in the park but did not plow up to the Tenants' driveway. The Landlord refused their requests to plow the road.

The Tenants submitted emails between them and C.C. in which they ask him to remove the snow leading up to their driveway. At one point, C.C. replied "I would usually try and get closer to someone's place but frankly in your case as you've showcased I need not bother. You have a tendency to complain any which way!"

The Tenants submitted photos of the snow showing it was not plowed up to their driveway.

Unlawful rent increase

Legal Counsel submitted as follows. The Tenants received the Notice of Rent Increase in evidence December 28, 2018. The increase is based on an increase in utility fees and expenses. The Notice requires the Landlord to provide documentation supporting the increase when requested. The Tenants emailed C.C. requesting the documentation; however, C.C. did not reply. Other tenants in the park requested the documentation and C.C. sent them photos of the documentation. These have been submitted as evidence. The documentation was not posted in a common area.

Legal Counsel relied on section 35 of the *Act* and further submitted as follows. The Landlord failed to provide the documentation supporting the rent increase as required. This has precluded the Tenants from confirming that the rent increase is legitimate. The Landlord has not met the test for a lawful rent increase. The Landlord has obstructed the process. The rent increase is invalid. The Tenants should be reimbursed for the rent increase paid up to this point. The rent increase should not be effective moving forward. The Tenants seek an order that the Landlord provide the documents.

The Affidavit states in part the following. Tenant C.G. was served with the Notice of Rent Increase. She requested documentation supporting the increase from C.C. twice via email. C.C. did not respond to her emails. She received photos of the documentation from another tenant in the park. The photos cannot be used to determine whether the imposed rent increase has been calculated properly.

The Notice of Rent Increase was submitted as evidence.

The Tenants submitted emails from December 31, 2018 and January 16, 2019 in which they asked C.C. for the documentation in relation to the rent increase.

The Tenants submitted emails between C.C. and other tenants in which C.C. provided photos of the documents relating to the rent increase.

Site plan

The Tenants sought an order that the Landlord comply with the previous order made on File Number 1 in relation to a site plan. The Tenants had obtained a site plan from the City. I understood them to say the Landlord provided the site plan to the City. The Tenants took issue with the site plan because it does not include areas that the prior arbitrator found were included in the site. Legal Counsel advised that the Landlord never provided the Tenants with a site plan as ordered.

The Tenants also sought an order that the site plan obtained from the City is not a valid site plan.

The Affidavit states in part the following. The Landlord was ordered to complete a site plan at the previous hearing. The Landlord provided a site plan in September that does not meet the requirements of the prior order. The Tenants seek an order that the site plan drafted by them be declared effective as the legal site plan.

Analysis

Section 7 of the *Act* states:

> 7 (1) If a landlord…does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord…must compensate the [tenant] for damage or loss that results.
>
> (2) A…tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> 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:
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> - 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.

Cancelled cheque x 2 and registered mail fees

The arbitrator in File Number 1 permitted the Tenants to deduct $550.00 from future rent due to the Landlord. The decision was issued June 28, 2018. It was reasonable for the Tenants to seek return of their August 2018 rent cheque so that a new one could be issued which reflected the permitted deduction.

Based on the undisputed Affidavit evidence and submissions, as well as the emails, I accept that the Tenants asked C.C. to return the August cheque. Based on the same evidence, I accept that C.C. refused to return the cheque and attempted to place conditions on returning the cheque.

C.C. was not permitted to place conditions on returning the cheque or to refuse to return the cheque given the prior arbitrator's decision. I find C.C.'s behaviour amounted to non-compliance with the prior decision. I accept the undisputed Affidavit evidence and submissions and find that the Tenants had to cancel the August rent cheque which cost $18.00. I find this cost arose out of C.C.'s non-compliance with the prior decision. Pursuant to section 55(3) of the *Act*, I order the Landlord to reimburse the Tenants for this cost.

I am not satisfied the Tenants are entitled to reimbursement for the cost of sending the new cheque by registered mail. The Landlord was not required to personally return the original August rent cheque. The Landlord was not required to personally pick-up the new cheque. Therefore, I am not satisfied the registered mail cost arose out of C.C.'s non-compliance. Further, the Tenants could have chosen a different method of providing the new cheque to the Landlord which would not have incurred a cost.

The Tenants are not entitled to possible future costs. If the Landlord continues to fail to comply with decisions and orders of the RTB, the Tenants can continue to seek reimbursement for the costs that arise out of his non-compliance.

Occupation of common area

Based on the undisputed testimony, Affidavit evidence and submissions, as well as the photos, I accept and find the following. The Landlord has been parking equipment and putting cement blocks on the common area outside of the Tenants' home since August of 2018. The Tenants previously used this common area to play games, have BBQs and have park gatherings. The Landlord has torn up the area such that the Tenants must be careful walking in the area.

I accept that this disturbance is a breach of section 22(d) of the *Act* which protects the Tenants' right to the "use of common areas for reasonable and lawful purposes, free from significant interference." Based on the evidence noted above, I accept that the area cannot be used because of the equipment on it and because it has been torn up. I accept that this has been ongoing for a year. I accept that this amounts to loss and that the value of the tenancy has been reduced because of it.

I accept the submissions of Legal Counsel that the Landlord has previously been asked to remove the equipment. I find the Landlord was aware of the disturbance. I find the Tenants attempted to minimize their loss by bringing the issue to the Landlord's attention.

I find the $30.00 per month requested reasonable given it is a small portion of the rent and given how long this has been an issue. I note that this equals $360.00 over 12 months. The Tenants have only sought $350.00 and I award them this amount pursuant to section 60 of the *Act*.

I decline to order the Landlord to remove the equipment from the common area. However, it is open to the Tenants to continue to seek compensation as long as these items are infringing on the Tenants' right to use of the common area for reasonable and lawful purposes, free from significant interference.

Failure to remove snow

Based on the Notice of Rent Increase, I accept that snow removal is included in the rent.

Based on the undisputed Affidavit evidence and submissions, as well as the photos and emails, I accept that the Landlord failed to plow the road up to the Tenants' driveway.

The photos show that the unplowed area is a common area as the Landlord has a truck parked on it.

I find the Landlord failed to comply with the tenancy agreement which I accept includes snow removal in rent.

I accept the submissions of Legal Counsel that the Tenants could not get over the snow and had to remove it themselves. This is supported by the photos showing the extent of the snow. I accept the submissions of Legal Counsel that the snow was present for 10 days. I accept that the Tenants experienced loss of a service included in rent and loss in relation to the inconvenience of having to deal with the snow themselves.

Based on the emails, I find the Tenants attempted to minimize their loss by contacting C.C. and giving him an opportunity to rectify the situation. I accept based on the emails that C.C. chose not to rectify the situation.

I find the $50.00 requested reasonable. This is not an extravagant sum. I find it reasonable given the rent amount. I find it reasonable given the inconvenience caused to the Tenants. I find it reasonable given the inconvenience occurred over 10 days. The Tenants are awarded the $50.00 sought pursuant to section 60 of the *Act*.

Further, Policy Guideline 1 states as follows at page seven:

> 6. The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks. [emphasis added]

I find the Landlord failed to comply with Policy Guideline 1 and their obligations in relation to maintaining the park.

I also agree that snow removal is a service included in the rent. Section 1 of the *Act* defines services and facilities which include “roadway and other facilities”. I find snow removal is part of providing a roadway.

Section 21 of the *Act* states:

> 21 (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the manufactured home site as a site for a manufactured home, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I accept the submission of Legal Counsel that the Landlord did not reduce rent despite his failure to plow the road. I find the Landlord breached section 21 of the *Act*. I would have awarded the Tenants the $50.00 sought on this basis as well.

Unlawful rent increase

Based on the undisputed Affidavit evidence and submissions, as well as the Notice of Rent Increase and emails, I accept the following. The Tenants were served with the Notice of Rent Increase in December of 2018. The Notice of Rent Increase stated in section F that the Landlord would provide the necessary documentation in support of the increase by email upon request. The Tenants emailed C.C. twice asking for the documentation. C.C. did not reply and did not provide the documentation. The documentation was not posted in a common area.

The Notice of Rent Increase is clear on the Landlord's obligation to provide the documentation supporting the rent increase as it sates as follows:

- Section D on page 2 of 4: the landlord will provide access to a complete set of tax notices and invoices for local government levies and public utilities as indicated in section F (Documentation) or give you copies upon request;

- Section F on page 4 of 4: The Landlord must provide access to a complete set of tax notices and local government levy invoices, public utility bills and assessment notices. These may be posted in a common area for all tenants, but the landlord must provide a tenant with copies upon request.

- Under "Landlord Instructions" page 2 of 2: You must provide the tenant with access to a complete set of tax notices and local government levy invoices, public utility bills and assessment notices…If a tenant requests a copy, you must provide a copy.

Policy Guideline 37 deals with this issues and states at page three:

> **Documentation to support proportional amount rent increase**
>
> A landlord who is using the proportional amount rent increase provisions must provide tenants with access to a complete and relevant set of tax notices and local government levy invoices, public utility bills and assessment notices. These may be posted in a common area for all tenants, but the landlord must provide a tenant with copies upon written request. If a tenant requests a copy of the documentation, the landlord must provide the tenant with a copy within three business days following receipt of the written request.
>
> A copy of the documentation must remain posted in a common location and must be available to a tenant on request until the effective date of the rent increase. If, before that date, a tenant reports to the landlord that the posted copy, or part of it, is no longer available, the landlord must resolve the issue within three business days.

I find the Landlord failed to comply with the clear directions on the Notice of Rent Increase as well as the requirements set out in Policy Guideline 37 by failing to respond to the Tenants' request for the documentation supporting the rent increase.

It is not sufficient that C.C. sent other tenants in the park the documentation. It is not the responsibility of other tenants in the park to comply with the Notice of Rent Increase or Policy Guideline 37, it is the responsibility of the Landlord to do so. Further, it is not the responsibility of the Tenants to track down the documentation from other tenants in the park. When the Tenants requested the documentation, the Landlord was to provide it to them within three business days.

Further, the photos provided to other tenants by C.C. are not sufficient to comply with the Notice of Rent Increase or Policy Guideline 37. C.C. has included numerous pages spread out and photographed from a distance. The pages overlap. It is unreasonable to expect the Tenants to determine the validity of the rent increase from the photos provided.

The purpose of the requirements set out in the Notice of Rent Increase and Policy Guideline 37 is to require a landlord to provide tenants with the necessary information to determine whether a rent increase complies with the *Act* and the *Manufactured Home Park Tenancy Regulation* (the "*Regulations*"). The Tenants are not required to pay a rent increase that does not comply with the *Act* and *Regulations* and have a right to challenge an illegal rent increase through the RTB. By failing to provide the documentation that supports the rent increase, the Landlord has taken away the Tenants' ability to confirm the lawfulness of the rent increase. The Landlord has obstructed the process.

Part 4 of the *Act* limits rent increases and governs how rent increases can be imposed. To give effect to Part 4, and pursuant to section 55(3) of the *Act*, I order that the Notice of Rent Increase dated December 28, 2018 is invalid and of no force or effect. The Notice of Rent Increase changed the rent from $720.50 to $749.00. This change is not effective. The rent will revert to $720.50 per month. The Tenants are entitled to $171.00 which is the rent increase paid from April to present.

The rent will remain at $720.50 unless the Landlord issues a new Notice of Rent Increase. If the Landlord does so, the Landlord must comply with Part 4 of the *Act* including section 35(2) of the *Act* which requires the Landlord to give the Tenants "notice of a rent increase at least 3 months before the effective date of the increase."

I decline to issue an order that the Landlord provide the documentation supporting the Notice of Rent Increase dated December 28, 2018 as this is invalid and of no force and effect. Therefore, the documentation supporting it is no longer relevant.

Site plan

I accept the submissions that the Landlord failed to provide the Tenants with a site plan and therefore failed to comply with the order made on File Number 1. However, I cannot issue the same order. That order stands and the Landlord was, and is, required to comply with it. The remedy for the Landlord's non-compliance with the order is for

the Tenants to seek compensation. The Tenants have not done so here and therefore I will not consider this issue.

I also note that, regardless of the Landlord's site plan, the prior arbitrator found that "the southern corridor as described by the Tenants in paragraph 4 of their Affidavit is part of the Tenants' site, along with the back yard." This decision stands and is enforceable through the RTB.

Legal Counsel did not point to a section of the *Act* under which I have authority to order that the site plan obtained from the City is not a valid site plan or that the site plan drafted by the Tenants is the legal site plan. I do not find that I have authority to make these orders and decline to do so.

As the Tenants were successful in this application, I award them reimbursement for the $100.00 filing fee pursuant to section 65 of the *Act*.

In summary, the Tenants are entitled to the following:

1	Cancelled cheque x 2	$18.00
2	Registered mail fees	-
3	Occupation of common area	$350.00
4	Failure to remove snow	$50.00
5	Unlawful rent increase	$171.00
6	Filing fee	$100.00
	TOTAL	**$689.00**

The Tenants can deduct $689.00 from future rent pursuant to section 65(2) of the *Act*.

I note that any rent cheques the Landlord has for the Tenants will now be incorrect given that the rent increase is invalid. Further, one of the rent cheques will be incorrect given the Tenants are entitled to deduct $689.00 from future rent. Therefore, pursuant to section 55(3) of the *Act*, the Landlord is ordered to return all rent cheques he has in his possession for the Tenants within seven (7) days of receiving this decision. The Landlord is to do so in accordance with the service methods set out in section 81 of the *Act*. The Tenants can then re-issue the cheques as required. If the Landlord fails to return all of the cheques he has for the Tenants in his possession, the Tenants can seek further compensation for this through the RTB.

Conclusion

The Tenants are entitled to deduct $689.00 from one future rent payment.

The Notice of Rent Increase dated December 28, 2018 is invalid and of no force or effect. Rent reverts back to $720.50 per month.

The Landlord is ordered to return all rent cheques he has in his possession for the Tenants within seven (7) days of receiving this decision. The Landlord is to do so in accordance with the service methods set out in section 81 of the *Act*. The Tenants can then re-issue the cheques as required.

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: September 06, 2019

Residential Tenancy Branch