



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RR, RP, FFT

Introduction

On January 8, 2018, the Tenants submitted an Application for Dispute Resolution under the *Manufactured Home Park Tenancy Act* ("the Act") for an order for regular repairs, to request a rent reduction due to required repairs to the rental unit, for a monetary order for compensation and to recover the filing fee for this application. The matter was set for a conference call.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter - *Res Judicata*

During the hearing, it was brought to this Arbitrator's attention that these parties have had two previous Dispute Resolution hearing with the Residential Tenancy Branch. The parties testified that during the previous hearings, a decision had been rendered regarding the Tenant's request for repairs and for the Tenant's request for compensation for losses. Both the Landlord and the Tenant provided the previous file number for the two hearing to this arbitrator; those file numbers are recorded on the style of cause page of this decision. The Tenant and the Landlords' also submitted copies of both the decisions from the previous hearings into documentary evidence.

Res judicata is the legal doctrine preventing, the rehearing of an issue that has been previously settled by a decision determined by an Officer with proper jurisdiction.

I have reviewed the previous decisions and the application that I have before me in these proceedings, and I find that previous Arbitrators' had already made a determination regarding the request for repairs and for compensation for losses. I find that the principle of *res judicata* bars me from considering if the Tenant's request, in this application, for an order to repair of the yard for this tenancy. However, I find that I am able to hear the Tenant's request for compensation for losses from the date of the second proceedings and onward. Therefore, I will proceed in this hearing on the Tenant's requests, for a rent reduction and for compensation for losses, after the decision dated November 22, 2019.

Issues to be Decided

- Is the Tenant entitled to a rent reduction due to required repairs to the rental unit?
- Is the Tenant entitled to compensation for losses or money owed?
- Is the Tenant entitled to the return of the filing fee?

Background and Evidence

Both parties testified that the tenancy began on August 1, 2017, as a month to month tenancy. That the rent had been \$418.00 but as of February 1, 2020, the rent had increased to \$429.22 and was to be paid by the first day of each month.

Both parties agreed that there have been two previous hearing for this tenancy and that in the first hearing that took place on October 22, 2018, the Landlord was ordered to make repairs to the yard on rental property. Both parties also agreed that the ordered repairs to the yard had not been completed as of the date of this hearing.

The Tenant is requesting rent reduction in the amount of 50% of the rent for the rental property, as of February 1, 2020, and a retroactive rent reduction in the amount of 20% of the rent for the rental property from the date of the required completion of repair work as set out in the original order to repair dated October 22, 2019.

The Tenant testified that the refusal by the Landlord has caused them a loss of quiet enjoyment of the rental property and that they had been advised that asking of 20% in a

retroactive rent reduction and 50% in an ongoing rent reduction to be appropriate compensation for the loss of the use of their yard. When asked, the Tenant testified that there 10% of the rental property is covered by the repair order.

The Landlord testified that the ordered repair work had not been completed because the Tenant would not agree to paid for any damage the repair vehicles would cause to the adjoining properties while completing the ordered repairs. When asked to explain why the Tenant would be responsible for paying for repairs, need due damage caused by the Landlord repairperson. The Landlord testified that the Tenant would be responsible for the cost of any damage caused by the vehicles required to carry out the repair order from the decision dated October 22, 2018, because it is the Tenant's who requested the order for repairs.

The Landlord also testified that the Tenant has full use of the rental property and that the grass has not grown back on the yard because the Tenant has not watered the area sufficiently. The Landlord submitted 50 pages of evidence to these proceedings; including emails, witness statements, the Landlords' written response to the Tenant's claim, copies of the two previous decisions for this tenancy, a copy of the tenancy agreement, a copy of the park rules, and two pictures.

Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

I find that there are two previous decisions for this tenancy, decisions, which are identified on the first page of this decision, remain outstanding and are in full force and effect based on the evidence before me.

I acknowledged the Landlords' submitted documentary evidence to these proceedings; however, after reviewing this evidence, I find that the totality of the evidence submitted by the Landlords' to be an attempt to reargue the decision made by the Arbitrator on October 22, 2018. The Landlord was advised during these proceedings and is again advised in this decision, that this Arbitrator can not rehear an issue that has been previously settled by a decision determined by another Arbitrator from this office.

I accept the testimony of both parties that the Landlord has not completed the repairs to the yard as ordered in the decision dated October 22, 2018. I find that the Landlord is in

breach of an order of this office by not completing the repairs as order, and as a result, the Tenant has suffered a loss due to this tenancy.

I accept the testimony of the Tenant that the repair order affects 10% of the rental property and that the Tenant has lost enjoyment of that part of the rental property due to the repair not being completed as ordered. Accordingly, I find that the Tenant is entitled to a 10% reduction of rent in the amount of \$42.92, due to loss of enjoyment of the rental property. I order that the Tenant's rent will be \$386.30 per month, effective April 1, 2020.

I also find that the Tenant will continue to receive the awarded rent reduction until the Landlord completes the repairs to the rental property as ordered in the decision dated October 22, 2018.

Once the repairs are completed, the Landlord must apply for and obtain an order from this office in order to return the reduced rent to the normal monthly amount.

Concerning the Tenant's request for compensation in the form of a retroactive rent reduction, I find that the Landlords' continued noncompliance with the order to repair the yard, after the second hearing with this office regarding this matter, has resulted in a loss of enjoyment of the rental property by the Tenant. Therefore, I order that the Tenant receive compensation in the form of a retroactive rent reduction for the period between the second hearing for this tenancy and these proceedings. Accordingly, I award the Tenant the same 10% rent reduction as awarded above, for December 2019, January 2020, February 2020 and March 2020, in the amount of \$169.44.

<u>Rental Period</u>	<u>Paid</u>	<u>Refund Amount</u>
December 2019	\$418.00	\$41.80
January 2020	\$418.00	\$41.80
February 2020	\$429.22	\$42.92
March 2020	\$429.22	\$42.92
Due to Tenant		\$169.44

I grant permission to the Tenant to take a one-time deduction of \$169.44, from their next month's rent, in order to recover this award.

Additionally, in response to the Landlord's claim that the repair order has not been completed as the Tenant has not agreed to cover the cost of associated damage that may be caused to the surrounding yards by the Landlords' repair vehicles. I have

reviewed the original decision dated October 22, 2018, and I find that the Landlord is responsible for all costs associated with completing that ordered repair, including the cost to repair any damage to the surrounding area caused by the vehicles used by the Landlords' to complete repair work.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in this application, I find that the Tenant is entitled to recovery of the filing fee for this application. The Tenant is permitted to take a one-time deduction of \$100.00, from their next month's rent, in order to recover this award.

Conclusion

I hereby order the Landlord to make the repairs previously ordered in the decision dated October 22, 2018.

I order that effective April 1, 2020, the Tenant's rent will be \$386.30 per month.

I grant the Tenant permission to take a one-time deduction of \$269.44, from their next month's rent, in order to recover the amounts awarded above; \$169.44 in a rent refund and the \$100.00 filing fee.

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 25, 2020

Residential Tenancy Branch