Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RR, OLC, RP, LRE, FFT

Introduction

The tenant filed an Application for Dispute Resolution on October 9, 2020 pursuant to s. 52 of the *Manufactured Home Park Tenancy Act* (the "*Act*"). The matter proceeded by way of a hearing pursuant to s. 67(2) on December 22, 2020.

The tenant seeks the following:

- compensation for monetary loss or other money owed;
- a reduction in rent for repairs agreed upon but not provided;
- the landlord's compliance with the legislation and/or the tenancy agreement;
- completion of repairs made to the site, where they have contacted the landlord, but the work was not completed;
- suspension or conditions set on the landlord's right to enter the site;
- reimbursement of the Application filing fee.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to present oral testimony during the hearing.

The landlord confirmed their receipt of the tenant's prepared evidence. The tenant also confirmed they received the landlord's evidence. I granted the tenant more time to provide their evidence to this office after the conclusion of the hearing, after determining doing so would not prejudice the landlord who had previously received that same evidence. I gave that direction in accordance with Rule 3.19 of the *Residential Tenancy Branch Rules of Procedure*.

Issue(s) to be Decided

- Is the tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 60 of the *Act*?

- Is the tenant entitled to reduced rent for repairs agreed upon but not provided, pursuant to s. 58?

- Is the tenant entitled to completion of repairs they previously requested, pursuant to s. 26?

- Is the landlord obligated to comply with the legislation and/or the tenancy agreement, pursuant to s. 55?

- Is the tenant entitled to an order that suspends or otherwise limits the landlord's right to enter, pursuant to s. 63?

- Is the tenant entitled to reimbursement of the Application filing fee, pursuant to s.72?

Background and Evidence

The tenant set out the events that began in summer 2020. In late August they re-graded and levelled their home site driveway at their own expense and labour, after informing the landlord of this work.

The tenant provided an email dated August 19, 2020 wherein they described the work they were planning to complete on their driveway. The details included their knowledge of the power lines and the water lines. The tenant provided that, prior to their driveway work, they met with a representative of the landlord, who after discussion about dates and timelines approved the tenant's work schedule for this.

In the email, the tenant also requested a timeline for the landlord's repair of the waterline near their unit. This was the larger waterline project that began in April 2020, within the entire manufactured home park (the "property").

On October 6, the tenant received a call from the contractor who was working on the larger waterline issue that work was beginning on the tenant's own site. This excavation was to "fix a waterline leak [in the property] that had been identified 5

months prior." According to the tenant, the contractor (which they stated was "not a utilities company") dug three holes in the tenant's own driveway just to locate the waterline. After three days of work, eventually locating the correct line, the contractor patched the tenant's driveway back, essentially leaving behind a "mud pit". This has sunk further due to the onset of winter, and as of the tenant's Application "has not been rectified since."

The tenant claims the cost of "the material cost and machine rental cost" for their own driveway work from August 2020. This is the amount of $469.16. The tenant sent pictures of three receipts to show the amounts they paid for this work.

For their repair request, the tenant provided a copy of the email they sent to the landlord on October 7, 2020. This is for "restoring [their] rental space to the state it was in before [the landlord's] unauthorized repairs – or better, as well as financial compensation in the form of a rent rebate."

On their Application, the tenant provided the amount of $580 for rent reduction. This is "equal to 2 months of pad rent to compensation. . . for the days of labor work involved in rebuilding my driveway myself."

Concerning the landlord's right to enter the site, the tenant takes issue with the way the contractor or agents of the landlord handled and moved the tenant's own property on the day excavation began. On their Application, the tenant indicates this portion of their claim is related to the landlord not giving notice for the work being done on October 6, to rearrange the tenant's own site. As a result, the tenant's own entry to the unit being "impaired" when they were trying to complete other winter preparatory work at that same time. This is also the portion of their claim wherein they request the landlord comply with the *Act* and/or the tenancy agreement.

The landlord provided a response to the tenant's claim in a single document entitled "Synopsis of the complaint" wherein they provide an overview of the project, and their separate concerns. They set out that the material cost and equipment rental which the tenant is trying to recoup were those "ordered 6 weeks prior" to the work on the tenant's own site.

The landlord set out how the contractors used were "the only outfit. . .which are bonded and insured to perform such complex underground utilities repairs." The scope of the work from April 2020 onwards became complicated in terms of defining a timeframe due to "severe staff shortage." Additionally, the municipality notified the landlord of another

possible subsequent water leak in July. The contractors, with assistance from the municipality, detected a leak in the “lower section of the park” where the tenant’s site is located.

In their response, the landlord made the following points:

- the contractor notified the lower section tenants in advance
- this work was “an emergency utility repair” with a high priority before winter
- no access or services to the tenant’s unit were interrupted, as shown in an attached photo – also, the tenant was provided with a secondary water service during the October 6 – 9 excavation
- upon completion of the work at the tenant’s site, the contractor “reclaimed the road and the driveway respectively and they even compacted the driveway with a power compactor” as shown in an attached photo
- all dirt and laneways or driveways needing excavation were “reclaimed and compacted with a power compactor after the leaks were fixed” – these were 11 separate sites in total
- notices of the larger property work were on the property’s own bulletin board, as well as “verbally, door to door knocking physically or calling”
- a timeline overall, as well as for separate stages, was hard for the contractor to establish due to staff shortages.

The landlord provided four separate receipts from the plumbing contractors who performed the work involved. In the hearing, they provided a timeline review of all the overall project work on the property, as well as the progression of work in the area around the tenant’s own site.

In the hearing, the landlord stated they were relying on the contractor to communicate with tenants in the property. They notified everyone in the property at the end of April that work was approaching, and then “the contractor had to handle communication to individual units.” The landlord maintains that tenants were notified of work via phone or email, with face-to-face communication being a challenge in a serious public health situation. The landlord referred to the entire project as a “tedious process.”

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish all of the following four points:

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

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or the tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 60 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party.

On their Application, the tenant made a twofold request for what amounts to monetary compensation. These are: a reduction in rent for repairs agreed upon but not provided; and compensation for monetary loss or other money owed.

The *Act* s. 58 grants authority to make an order granting a rent reduction:

(1) Without limiting the general authority in section 55 (3) *[director's authority respecting dispute resolution proceedings]*, if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

The *Act* ss. 26 (a landlord's obligation to repair and maintain) and 27 (emergency repairs) govern any tenancy agreement. I find s. 26(5) is important in my decision here, minus any evidence of a set condition in the tenancy agreement between these parties to show a different stipulation was in place:

(5) A landlord is not required to maintain or repair improvements made to a manufactured home site by a tenant occupying the site. . . unless the obligation to do so is a term of their tenancy agreement.

The tenant here does not show the landlord's approval for the waterline and driveway upgrade work undertaken by the tenant in August. That is not shown in the landlord's reply to the tenant via email on August 19, 2020. Instead, I find that piece shows the

landlord raising doubt about the efficacy of the tenant's planned driveway work: "There is lot more liabilities I have to take into account."

The parties did not come to an agreement, and the landlord did not at that point gauge the timeline for the lower park area work, something quite intangible at that point. Following this, the tenant immediately asked for "an estimate as to when the potable water line will be repaired", an inquiry into the project work timeline. There is no evidence the landlord gave an answer to this. I find it reasonable that such an answer was not possible in light of different pieces of the project carried out with shifting status priorities. I conclude that the tenant identified their driveway work to the landlord; however, it would set a very high expectation on the landlord to grant approval for this work with the strong possibility that work in that immediate area was fast approaching. Bringing this back to a consideration of s. 26(5), I find there is no strict term in the tenancy agreement setting an obligation on the landlord; moreover, an obligation or tacit agreement on the driveway work cannot be inferred from the evidence presented by the tenant here. With no obligation, and no tacit agreement, the landlord is not liable for the costs incurred by the tenant for their prior driveway work.

In sum, I find the tenant had knowledge of the wider project work happening in the park at that time. Given the tenant's profession, I find it reasonable for them to anticipate a high likelihood of work to be performed in the immediate area, or even within their own site. Minus an explanation for the urgency of their own driveway work (which they presented to the landlord as "minor"), I find the timeliness of the tenant's own driveway/waterline work is questionable. I accept the landlord's evidence that they gave notices to the property residents in a timely manner in the circumstances; therefore, I find the scope of the wider project work takes precedence here, and the landlord has provided ample evidence to establish that as the high priority for the whole wider area.

The tenant here applied for a rent reduction "equal to 2 months of pad rent to compensation. . . for the days of labor work involved in rebuilding my driveway myself." I find a rent reduction is not warranted. There is no evidence to show the landlord breached either the *Act* or the tenancy agreement. Further, I find there is no nexus between the 2 months timeframe, that amount of equivalent pad rent, and the "days of labor work involved". The landlord has shown the reconstruction of the driveway and provided photos of that work being undertaken. I find this shows the landlord restoring the tenant's driveway to a usable state, which is all the *Act* provides for in light of s. 26(5). Conversely, the tenant did not establish that they undertook further improvement work yet again after the project work finished. I find there is not sufficient evidence to show a true deficiency in the state of the driveway, post-project.

In sum, I find the landlord is not obligated to return the driveway to the prior state, above that which was provided by the landlord after the waterline work on October 9, 2020. With no basis to establish the landlord's obligation for this, the link back to two months' rent pad reduction is further obscured. For this reason, I dismiss this portion of the tenant's claim with both the need for further restoration and the calculated number of days of their own extra work not provided.

For the above reasons, I dismiss the monetary pieces of the tenant's Application. This is with regard to the four criteria set out above. For the cost of driveway materials and machine rental, I find the landlord is not obligated to cover these amounts where they have not violated the *Act* or any extant agreement. For the rent reduction claim, the value of the damage or loss is not established; moreover, I am not satisfied that a damage or loss exists.

The tenant also applied for the landlord to make repairs to the driveway, that it "be restored to its original state once the excavation was complete." In their Application – placed on October 9, 2020, the last recorded date of the excavation – the tenant stated: "This has not happened." With s. 26(5) in mind, I focus on the photos provided by the landlord. I find this is sufficient evidence to show a restoration of the driveway to a usable state. This is all the *Act* provides for. The tenant's evidence and their testimony do not establish the need for anything above and beyond the provisions of ss. 26 and 27.

Given the project has concluded, there is no anticipation of the landlord needing to resume work or again enter or otherwise alter the home site of the tenant. For this reason, I dismiss the tenant's claim wherein they request a restriction on the landlord's right of entry. I find there is no recurring pattern of landlord intrusion into the tenant's home site, and the tenant is not blocked or otherwise barred from entry to their own site.

The tenant also requested the landlord's compliance with the legislation and/or the tenancy agreement. Given I have found no breach on the part of either the landlord or agents in their employ, nor the workers engaged in project work on the property, I dismiss this portion of the tenant's Application. I find the contractor providing notice of work on the same day, as impractical as it may seem, only brought an inconvenience to the tenant. The evidence does not establish this is an unreasonable disturbance, when weighed against the landlord's evidence showing the need for project work on the property.

As the tenant was not successful in their Application, I find they are not entitled to recover the $100 filing fee paid.

Conclusion

For the reasons outlined above, I dismiss the claims the tenant outlined in their Application of October 9, 2020, without leave to re-apply.

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: January 8, 2021

Residential Tenancy Branch