Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRYSTAL RIVER COURT LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNDCT, FFT

Introduction

On September 1, 2020, the Tenants made an Application for Dispute Resolution seeking an Order to comply pursuant to Section 55 of the *Manufactured Home Park Tenancy Act* (the "*Act*"), seeking a Monetary Order for compensation pursuant to Section 60 of the *Act*, and seeking to recover the filing fee pursuant to Section 65 of the *Act*.

This Application was originally set down for a hearing on October 15, 2020 at 11:00 AM but was subsequently adjourned for reasons set forth in the Interim Decision dated October 16, 2020. This Application was then set down for a reconvened hearing on January 4, 2021 at 11:00 AM.

Both Tenants attended the reconvened hearing, with P.L. attending as their advocate. J.N. attended the reconvened hearing as the Landlord/owner. All parties in attendance provided a solemn affirmation.

At the original hearing, after receiving submissions from the parties about service of evidence, I was satisfied that the Tenants' evidence was served in accordance with the *Act* and the Rules of Procedure. As such, I have accepted the Tenants' evidence and have considered it when rendering this Decision.

However, only the Landlord's evidence served on October 2 , 2020 was served in accordance with the *Act* and the Rules of Procedure. As such, this evidence has been accepted and considered when rendering this Decision. The Landlord's evidence served on October 7, 2020 has been determined to be late and consequently, has been excluded and not considered.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 15, 2018, that rent was established in the amount of $672.08 per month, and that it was due on the first day of each month. A copy of a written tenancy agreement was submitted as documentary evidence.

P.L. advised that the tenancy agreement indicated that the driveway was the property of the Tenants and that they were responsible for the maintenance. He noted that the Tenants were instructed in the Addendum to the tenancy agreement to “pave the driveway with asphalt to a width of 19 feet, a maximum length of 30 feet and a compacted depth of at least 2 1/2 inches.” He stated that there was constant conflict between the Tenants, J.N., and the managers of the park with respect to the location of the driveway and the Tenants could not get a straight answer. He submitted an email, as documentary evidence, dated July 29, 2019 where the Tenants attached their plan for the driveway to J.N., but he did not respond to this plan. P.L. stated that the Tenants wanted a concrete driveway as opposed to an asphalt one.

He stated that despite the requirement of the tenancy agreement, J.N. approved a concrete driveway when the Tenants purchased the manufactured home. As per an email exchange from the managers of the park, the Tenants framed a driveway to the dimensions of 27’ X 19’ on October 19, 2019. The managers saw this and commented on how nice it appeared. On October 22, 2019, the concrete driveway was poured,

however, the managers of the park advised that the driveway was too high. Tenant M.A. stated that it was no higher than the frame.

On October 29, 2019, the Tenants received a warning letter from J.N. stating that a 10' length of the driveway must be removed and that the grade of the driveway must be lowered by November 30, 2019. The Tenants attempted to explain to J.N. in a November 20, 2019 email that there was miscommunication regarding the transition to the roadway, that the driveway was poured to the approved specifications and location, and that a concrete driveway must be poured to a depth of four inches. The Tenants then received an email from J.N. the next day where he demanded that the driveway be removed by December 31, 2019 or it would be removed at their expense.

On May 26, 2020, M.A. arrived home to find that the driveway had been cut into small squares by J.N. They received no notice that the Landlord would be entering their site. On May 29, 2020, they sent a warning letter to J.N. regarding the unauthorized destruction of their driveway, and they requested that he rectify this issue. That same day, they received an email from J.N. advising them that if they did not remove the driveway, it will be removed for them. On June 4, 2020, they received another email from J.N. which stated that the site is the Landlord's property that has been leased to them, and that as per the tenancy agreement and Addendum, he was permitted to have this concrete removed. On June 5, 2020, J.N. removed the concrete driveway without the Tenants' authorization.

The Tenants submitted pictures of the concrete driveway and noted that it was not much higher than what an asphalt driveway would have been. They also provided pictures of other sites in the park that had concrete driveways. They cited a news story regarding J.N.'s malicious acts of vandalism of against another resident of the park and stated that this is a pattern exhibited by him.

Tenant B.M. read from her personal statement and questioned why J.N. did not dispute the driveway issue through the Residential Tenancy Branch instead of destroying it. She referenced a transcript of a conversation between them and the park manager where he confirmed that he did not have any knowledge or experience with concrete driveways, that he "screwed up" because he did not advise J.N. about the framed driveway, and that he got into trouble later when the driveway was poured contrary to how J.N. wanted it. She advised that J.N. gave permission for the park managers to act on behalf of him. She stated that the driveway was built by M.A. and his father and it cost approximately $2,000.00.

J.N. advised that at the start of the tenancy, he sat down with the Tenants and read the entire tenancy agreement and Addendum with them, to which they initialed and agreed. He referenced Addendum # 1 which stipulated that the Tenants require the Landlord's written consent to conduct additions to the site. However, the Tenants did not provide any evidence of written consent from the Landlord for a concrete driveway, nor did they provide evidence of written authorization for an approved contractor to do the work. He stated that the Tenants have continually ignored park rules previously agreed upon. He advised that he is a professional engineer, and that the manner and dimensions with which the concrete driveway was constructed would impact how this driveway would tie into the roadway. Furthermore, it would also cause rainwater to be redirected under the skirting of a neighbouring home. He referenced the Park Rules which permitted him to go onto any site in the park and remove any unapproved changes that did not comply with the tenancy agreement, Addendums, or rules.

J.N. advised that he gave the Tenants notice on October 29, 2019 and November 21, 2019 to remove the concrete slab, and that he then went onto the Tenants' site on May 26, 2020 to have the concrete slab cut into pieces. He then provided them with a final notice on May 29, 2020 to remove the cut-up slab. On June 5, 2020, J.N. had the concrete driveway removed entirely.

In the reconvened hearing, P.L. advised that J.N.'s act of cutting up the concrete slab was a deliberate and negligent act, and he reiterated J.N.'s own words that this was done in malice as he needed to set an example, otherwise the residents of the park would believe that they could do "whatever they wanted" despite the park rules. He stated that he has had four other complaints from other residents of the park and J.N. puts fear into the residents of the park. It is his opinion that J.N. believes that he can manage the park with impunity. He confirmed that the park manager gave verbal consent for a concrete driveway, but there was never any written consent.

J.N. advised that he has attempted to work with the Tenants, that he has provided them with multiple warnings in writing to address different issues on the site, and that he provided them with an extra year to complete the driveway. He must ensure that any work on the driveway is done correctly so that it integrates with the rest of the park and does not potentially cause damage to another site. He advised that the Tenants were never provided with written authorization for a concrete driveway, that they never received written approval for the contractor, and that other residents of the park that did have concrete driveways were all granted written authorization prior to being installed.

The Tenants advised that they had verbal authorization for the concrete driveway from the park manager. The concrete forms were up for days and J.N. or the park manager had ample time to review the location and dimensions before the concrete was poured. It was only after the concrete was poured that the park manager acknowledged that he "screwed up" by having miscommunications with J.N. about the driveway.

P.L. advised that the Tenants are seeking compensation in the amount of **$238.48** for the loss of 11 days of pad rent due to J.N. cutting their driveway up on May 26, 2020 and then completely removing the remnants on June 5, 2020, without the Tenants' authorization. They are seeking compensation in the amount of **$2,000.00** for aggravated damages because of this deliberate and malicious act. Finally, they are seeking compensation in the amount of **$6,084.49** for the replacement cost of the driveway.

Analysis

Upon consideration of the evidence before me, I will outline the following relevant Sections of the *Act* that are applicable to this situation. I will provide the following findings and reasons when rendering this Decision.

Section 60 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the Tenants' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?

- Did the loss or damage result from this non-compliance?
- Did the Tenants prove the amount of or value of the damage or loss?
- Did the Tenants act reasonably to minimize that damage or loss?

In addition, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I must also potentially turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the submissions before me, the consistent and undisputed evidence is that the tenancy agreement required that the driveway be paved with asphalt, that any alterations to the site required J.N.'s written authorization, and that a contractor must be approved by J.N. in writing prior to any work commencing. While the Tenants claim that there was an agreement with J.N. at the start of the tenancy to allow for a concrete driveway, they have submitted insufficient evidence to corroborate this. Furthermore, they have provided insufficient evidence to demonstrate that they had a contractor, approved by J.N. in writing, to pour this concrete driveway.

In addition, I do find it important to note that the Landlord served the Tenants with a "Notice to Unit # 40" on September 23, 2019 advising them that the driveway must be paved with asphalt by November 30, 2019. Given this, it appears more likely than not that J.N. did not approve a concrete driveway as this notice clearly indicated to the Tenants that the driveway must be paved with asphalt.

However, I do acknowledge that the park managers did act as agents for the Landlord. As well, I accept that there was miscommunication between the Tenants, the park managers, and J.N., and from the conversations between the Tenants and one of the park managers, I find it more likely than not that this park manager unwittingly or mistakenly provided the Tenants with the impression that a concrete driveway was permitted instead of an asphalt one. Furthermore, I am also satisfied that the Tenants acted on what they believed to be verbal permission to install a concrete driveway despite not having written authorization to do so, or having it installed by a contractor approved by J.N., in writing, as indicated in the tenancy agreement and Addendum.

Had the Tenants complied with the terms of the tenancy agreement and Addendum, upon receiving J.N.'s written authorization, they would have likely obtained the particular

dimensions permitted, and more specifically the appropriate height of the concrete slab in this instance. As this project was not approved by J.N. in writing, it appears as if Tenant M.A.'s father poured the concrete slab without knowing the specific height dimensions required by the park. By doing so, I am satisfied that this improperly laid slab could potentially have caused an interference with the actual infrastructure of the site, or of neighbouring sites.

Regardless, I find that both parties are at fault and are culpable for this outcome. Had the park manager not erred and been a source of the miscommunication, I do not find it likely that the Tenants would have then poured the concrete driveway. Furthermore, the Tenants did pour this driveway without the written authorization and contractor approval as required by the tenancy agreement.

In taking this into consideration, with respect to the Tenants' claims for compensation, as the Tenants acknowledged that the cost to install the concrete driveway was approximately $2,000.00, I decline to award their claim for replacement cost in the amount of $6,084.49. As I am satisfied that both parties are at fault here, I award the Tenants a monetary award in the amount of **$1,000.00**.

With respect to the Tenants' claim in the amount of $2,000.00 for aggravated damages, while I acknowledge that J.N. could have handled this matter in a different manner, I am satisfied that this concrete driveway was installed without written authorization and was poured in a manner that did not properly to take into consideration the structure of the site itself, which could have resulted in future damage to the site or to other neighbouring sites. As such, I find that this unauthorized concrete driveway would be considered damage that the Tenants were required to rectify. Despite the multiple notices served to the Tenants from J.N., advising them to correct this issue, they did not do so. However, this concrete driveway likely would not have been poured if not for the miscommunication and misunderstanding involving the park manager. As such, I find that the cost that J.N. incurred as a result of having to remove this driveway satisfies this issue in its entirety. Consequently, I dismiss this claim without leave to reapply.

Finally, with respect to the Tenants' claim of $238.48 for the disturbance and loss over 11 days because J.N. went onto their site without their consent, as J.N. acknowledged that he did not provide the Tenants with the proper written notice required to enter the site pursuant to Section 23 of the *Act*, I grant the Tenants a monetary award in the amount of **$238.48** to satisfy this claim.

As the Tenants were partially successful in this Application, I find that the Tenants are entitled to recover $50.00 of the $100.00 filing fee.

Pursuant to Sections 60 and 65 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Item	Amount
Partial compensation for the driveway	$1,000.00
Breach of the *Act*	$238.48
Filing Fee	$50.00
Total Monetary Award	**$1,288.48**

Conclusion

Based on the above, the Tenants are provided with a Monetary Order in the amount of **$1,288.48** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: February 3, 2021

Residential Tenancy Branch