



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Manufactured Home Park Tenancy Act (Act) for:

- an order requiring the landlord to make repairs to the unit, site, or property; and
- to recover the cost of the filing fee.

The tenant attended the hearing; however, the landlord did not attend.

The tenant stated she served the landlords with her Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail on December 19, 2020. The tenant provided the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

The tenant submitted further that the registered mail envelopes were returned to her in January 2021, due to an incorrect address and the Canada Post Christmas delay. Directly thereafter, the tenant discovered the mistake and amended her application to include the correct landlords' address.

The tenant said she then served the landlords her application package personally at their home address on January 24, 2021.

I accept the tenant's evidence that the landlords were served notice of this hearing in a manner complying with section 82(1)(a) of the Act and the hearing proceeded in the landlords' absence.

The tenant was provided the opportunity to present her evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue –

The landlords submitted documentary evidence in advance of the hearing, on or about January 29, 2021, which I find further confirms that they received the tenant's application package.

The hearing continued for 29 minutes and despite being duly served, neither landlord called into the teleconference hearing.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlords to make repairs to the unit, site, or property and to recover the cost of the filing fee?

Background and Evidence

The tenant submitted that she purchased the manufactured home and moved onto the site on or about July 1, 2019.

To support her application for repairs, the tenant submitted that there is a retaining wall supporting the driveway next to her site that is failing and leaning on her carport. The tenant submitted that the retaining wall is old and wooden and was put in by previous tenants years ago, well before either she or the tenant next to her site moved into the manufactured home park.

The tenant submitted that despite many written and verbal requests, the landlords have failed to address the issue. The tenant explained that the retaining wall has shifted over the years and is now pressing against her home, which poses a serious risk of damage to her home, without action by the landlords.

The tenant submitted that she is not responsible, as a tenant, for making structural repairs to the property, as she does not own it. The tenant submitted further that the

leaning retaining wall is not in a reasonable state of repair and the weight of the wall could cause damage to her home over time.

The tenant submitted that the retaining wall was put in place by a previous tenant and approved by park management at that time. The tenant submitted that the retaining wall is part of the park property infrastructure, given that it is holds up and supports a part of the site.

The tenant submitted that both she and the tenant next door have asked the landlords for a map of the manufactured home park showing diagrams of each of the lots.

Filed into evidence by the tenant were photos showing the wooden retaining wall touching the tenant's home and written communication between the parties.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

I find the landlords were properly served the tenant's application package, which was supported by their submission of documentary evidence. However, as the landlords failed to attend the hearing to present their evidence, it is excluded.

As the landlords failed to attend the hearing to present their evidence in dispute of the tenant's application, the tenant's application is unopposed.

Section 26 (1) of the *Act* requires landlords to provide and maintain the manufactured home park in a reasonable state of repair and complies with housing, health and safety standards.

Section 26 (5) provides that landlords are not required to maintain or repair improvements made to a manufactured home site by a tenant occupying the site, or the assignee of the tenant.

In this case, the undisputed evidence is that a retaining wall was put in place by a tenant who lived in the park long ago, and that over time, the retaining wall has shifted. The photographic evidence shows that the retaining wall elevates the adjoining property the height of the retaining wall over the tenant's site. The photographic evidence also shows that the retaining wall is touching the tenant's home.

On the basis of the undisputed evidence, I find the tenant's home is in danger of being damaged by the shifting retaining wall, through no fault of her own. The retaining wall was not put in place by the tenant or the tenant on the site before her, or the current tenant living next door.

I find the landlord is obligated to ensure that all tenants' sites must be kept in a reasonable state of repair, and in this case, I find the tenant's site is not. The photographs clearly show the adjoining tenant's retaining wall is encroaching on the tenant's site.

Further, I accept the tenant's undisputed evidence that the retaining wall is a part of the park property infrastructure given that it holds up and supports a part of the pad.

For these reasons, I find these are repairs defined under the Act, for which the landlord is responsible.

Pursuant to section 55(3) of the Act, I therefore **Order** the landlord to repair or remediate the retaining wall between the tenant's site and the adjoining site so that it no longer touches the tenant's home or encroaches on her site, on or before, March 31, 2021.

If the landlords fail to comply with the order, the tenant is at liberty to file another application for dispute resolution and seek an order reducing her monthly rent until such repairs or remediation, in their entirety, have been completed.

In addition, the tenant submitted that both she and the adjoining tenant have requested site maps of the park and were denied.

I find this is a reasonable request of the tenant, and I exercise my authority under Section 55(3) of the Act, and order the landlords to provide the tenant with an official site map of the manufactured home park, no later than March 24, 2021.

As the tenant was successful with her application, I grant her recovery of her filing fee of \$100.

I direct the tenant to withhold the amount of \$100 from her next, or a future, month's rent. The tenant should inform the landlord when making this deduction, so that she is not served a 10 Day Notice to End Tenancy for Unpaid Rent by the landlords.

Conclusion

The tenant's application has been granted as the landlords are ordered to make repairs, as directed above.

The tenant is granted recovery of her filing fee of \$100.

The landlords are ordered to provide the tenant with an official site map of the manufactured home park.

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 10, 2021

Residential Tenancy Branch