



Dispute Resolution Services

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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 OLC, MNDCT, RR, FFT

Introduction

This hearing dealt with the adjourned application for Dispute Resolution by the Tenants filed under the *Manufactured Home Park Tenancy Act* (the “Act”) for an order for the Landlord to comply with the Act, for a monetary order for compensation, for a rent reduction, and to recover the filing fee paid for this application. The matter was set for a conference call.

Both the Tenants and their legal counsel (the “Tenants”) and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

This final hearing decision should be read in conjunction with both interim decisions, dated October 21, 2021, and December 9, 2021.

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.

Issues to be Decided

- Are the Tenants entitled to a monetary order for compensation?
- Are the Tenants entitled to a rent reduction?
- Should the Landlord be ordered to comply with the *Act*?
- Are the Tenants entitled to the return for their filing fee for this application?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that this tenancy began on December 2, 2006, as a month-to-month tenancy. The parties agreed that pad rent for this tenancy is currently \$763.50 per month due on the first day of the month. A copy of the tenancy agreement was submitted into documentary evidence by the Landlord and the Tenants.

The parties agreed that there had been four previous hearings regarding this tenancy with the Residential Tenancy Branch (RTB); the file numbers for those proceedings are recorded on the style of cause page of this decision.

The Tenants testified that the Landlord had previously been ordered to provide snow removal services for this tenancy. The Tenants submitted that the Landlord has not been providing snow removal to their rental pad as required. The Tenants submitted that in January 2021, the Landlord removed the snow from the roadway leading to the other rental pads in the park but refused to remove the snow from the roadway leading to the Tenants pad and their parking area. The Tenants testified that they had to shovel their own snow and request \$100.00 in compensation for the Landlord's refusal to provide the required snow removal service. The Tenants submitted four pictures into documentary evidence.

The Landlord testified that they did remove the snow as required from all roadways and parking areas in the park. The Landlord testified that the picture evidence provided by the Tenants did not prove they didn't remove the snow, as the pictures do not have a date or time stamps and were most likely taken just before they removed the snow.

The Tenants testified that the RTB had previously ordered the Landlord to remove equipment from a common area that was blocking their use of the space. The Tenants submitted that the Landlord left the equipment in the common area long after being ordered to remove it and that when they did finally remove the equipment, they installed a new rental pad in the common space, that has now been rented to a new occupant of the park. The Tenants testified that they are requesting \$50.00 in compensation per month that they have been without the use of the common area and a rent reduction for the removal of the use of the common area from their tenancy. The Tenants submitted nine pictures into documentary evidence.

The Landlord testified that they did remove the equipment from the common area as ordered. The Landlord testified that they had received a letter from the RTB Compliance Department dated August 29, 2019, stating that the department had investigated a claim of breaches to orders of the RTB but that no evidence of breaches had been found. The Landlord provided reference number 2019-0048 for this letter from the RTB Compliance Department.

The Tenants confirmed that they had made a call to the RTB Compliance Department in 2019 regarding this tenancy.

The Landlord testified that they have converted the common area in question in these proceedings into an additional rental pad for the park and confirmed that a renter currently occupies this rental pad.

The Tenants testified that the Landlord had refused to cash six rent cheques provided to the Landlord, saying that the cheques had too much written on them and that the Landlord's bank refused to cash them. The Tenants testified that their bank confirmed that these cheques were ok to cash and Landlord had forced them to issue new cheques unnecessarily. The Tenants are requesting the recovery of the cost of their banking fees, consisting of \$1.02 for each cheque they had to reissue and \$18.00 for one-stop payment. The Tenants submitted three pages of copied cheques and a copy of their bank fee schedule into documentary evidence.

The Landlord testified that the Tenants had written all over the face of the cheques they provided for the rent and that the Landlord's bank had refused to accept the cheques, so they had to ask for replacements.

The Tenants testified that a previous order of the RTB had required the Landlord to provide the Tenants with a copy of the site plan for the park. The Tenants testified that the Landlord had provided them with a copy of a site plan but that they believe this copy to be incorrect or inaccurate and request that the Landlord be ordered to comply with the Act and provide a copy of the current site plan.

The Landlord testified that they had provided the Tenants with a copy of the correct site plan as ordered.

Analysis

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

The Tenants are claiming for \$3,840.00 in compensation due to the Landlord's failure to comply with previous orders issued by the Residential Tenancy Branch (RTB).

Specifically, the Tenants claim is that the Landlord had failed to provide snow removal services as order, that the Landlord failed to allow them access to a designated common area, and that the Landlord had forced them to reissue rent cheques. Awards for compensation due to damage or losses are provided for under sections 7 and 67 of the Act. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- 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.

In order to determine if the Tenants are entitled to compensation, I must first determine if there had been a breach of the *Act* by the Landlord. I will address each of the Tenants' claims individually.

I have reviewed the May 26, 2021, decision issued by the RTB, which states the following regarding the Snow removal:

“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.”

[Reproduced as written]

Based on the May 26, 2021, decision issued by this office, I find that the Landlord is required to provide snow removal services to this tenancy.

During these proceedings, the Landlord and Tenants offered conflicting verbal testimony regarding the snow removal service provided by the Landlord during the 2021/2022 winter season. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their verbal testimony to establish their claim. As the applicants to these proceedings, I find that it is the Tenants who hold the burden of proof in this case.

I have reviewed the documentary evidence submitted by the Tenants, specifically, five pictures depicting the rental property during the winter. I noted that none of these pictures are date or timestamped, two are colour, two are black and white, two of these pictures are taken during the day, and two were taken at night. After reviewing these four pictures, I find that these pictures provided insufficient evidence to prove, to my satisfaction, that the Landlord had failed to provide snow removal services in January 2020, as claimed. Therefore, I dismiss this portion of the Tenants' claim.

As for the Tenants' claim for loss of use of a common area, I have reviewed the May 26, 2021, decision issued by the RTB, noted that it stated the following regarding the common area:

“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."

[Reproduced as written]

Based on the May 26, 2021, decision issued by this office, I find that the use of the claimed common area on the rental property was found to be a part of this tenancy agreement. Although the Landlord was not ordered to remove the equipment from the common area, in that previous decision, the Tenants were granted permission to seeking further compensation as long as these items were infringing on their right to use the common area.

During these proceedings, the Landlord and Tenants offered conflicting verbal testimony regarding when the equipment was removed from the common area. As stated above, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their verbal testimony to establish their claim. As the applicants to these proceedings, the Tenants maintain the burden of proof in this case.

I have reviewed the documentary evidence submitted by the Tenants, specifically, the nine pictures depicting the common area of the rental property. Again, I noted that none of these pictures are date or time stamped. After reviewing these nine pictures, I find that these pictures provided insufficient evidence to prove, to my satisfaction, that the Landlord had failed to remove the equipment from the common area after receiving the May 26, 2021 decision.

However, I except the agree-upon testimony of the parties that this common area has been converted to a new rental pad and is currently occupied by a new renter in the park. Section 27 of the *Act* states the following regarding the removal of a service or facility during a tenancy:

Terminating or restricting services or facilities

- 27 (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 rental unit as living accommodation, 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.*

Therefore, as of the May 26, 2021 decision found that the use of this common area was a part of this tenancy and that the parties agreed that the use of this common area is no longer available to these Tenants due to its conversion to a rental pad, I find that the Landlord breached section 27 of the *Act* when they failed to issue the Tenants RTB form #RTB-24 Notice Terminating or Restricting a Service or Facility, and a rent reduction before they converted this common area into a new rental pad.

Therefore, I find that the Tenants are due a retroactive rent reduction for the removal of the common area for their tenancy.

I have reviewed the testimony offered by the parties during these proceedings and their written statements, and I noted that neither the Landlord nor the Tenants' offered a specific date as to when the new renters moved on to the rental pad installed in this common area. In the absence of a specified date, I find that on a balance of probabilities, the new rental pad was occupied as of the month the Tenants submitted their application for these proceedings, June 2021.

The Tenants have requested \$50.00 per month in compensation in their application for the removal of the common area. However, I find that I am bound by the previous

arbitrator decision, in which the Tenants were awarded \$30.00 per month for the loss of the use of this common area. Therefore, I award the Tenants a retroactive rent reduction of the previously awarded amount of \$30.00 per month, starting on June 1, 2021.

I order that the current rent for this tenancy be reduced by \$30.00 per month, to the amount of \$733.50 per month.

Additionally, I award the Tenants \$300.00 in the recovery of their retroactive rent reduction for the period between June 2021 to March 2022.

The Tenants have also filed for \$40.00 in compensation for the recovery of their banking fees and cheque replacement costs ("Banking fees"). I have reviewed the testimony and documentary evidence submitted by the Tenants for this portion of their claim, and I find that there is insufficient evidence before me to show that these fees were incurred due to a breach of the *Act* by the Landlord. Therefore, I dismiss this portion of the Tenants' claim.

Finally, the Tenants have also requested an order to comply with the *Act*, claiming that the Landlord had not provided them with an appropriate copy of the site plan for this park. Again, the Landlord and Tenants offered conflicting verbal testimony on this point, and again, as the applicants to these proceedings, I find that it is the Tenants who hold the burden of proof in this case.

I have reviewed the evidence provided on this point by the Tenants, and I find that there is a lack of evidence to show that the site plan provided by the Landlord to the Tenants was not appropriate or constituted a breach of the previous decision of the RTB. Therefore, I dismiss this portion of the Tenants' claim.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

I grant permission to the Tenants to take a one-time reduction of their next month's rent, in the amount of \$400.00, consisting of the retroactive rent reduction between June 2021 to March 2022, in the amount of \$300.00 and the recovery of the \$100.00 filing fee for this hearing, in full satisfaction of this amounts awarded above.

Conclusion

I order that the monthly rent for this tenancy is reduced to by \$30.00 per month, to the amount of \$733.50 for the removal of the common area for this rental property.

I grant permission to the Tenants to take a one-time reduction from their next months rent in the amount of \$400.00, in full satisfaction of the amounts awarded in this decision.

I dismiss the Tenants claim for compensation for snow removal and banking fees.

I dismiss the Tenants claim for an order that the Landlord comply with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 14, 2022

Residential Tenancy Branch