



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CountryView Estate Mobile Home
Park and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFT, OLC, MNDCT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Manufactured Home Park Tenancy Act* (the “Act”) for:

- Authorization to recover the filing fee from the other party pursuant to section 65;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 55; and
- A monetary order for damages or compensation pursuant section 60.

The tenant attended the hearing and the landlord was represented at the hearing by resident property manager, CM. (“landlord”). As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant’s Notice of Dispute Resolution Proceedings package and the tenant confirmed receipt of the landlord’s evidence. Both parties stated they had no concerns over timely service of documents.

Preliminary Issue

The tenant named the strata manager of the manufactured home park as the landlord in her application while the landlord named on the tenancy agreement is the manufactured home park. In accordance with Rule 4.2 of the Residential Tenancy Branch Rules of Procedure, I amended the tenant’s application to reflect the park as the properly named landlord. The correct names are listed on the cover page of this decision.

Issue(s) to be Decided

Who should pay for the plumber’s invoice to repair and insulate the frozen pipes under the tenant’s manufactured home?

Background and Evidence

The tenant testified that she has been living in the manufactured home park since 2009, but the tenancy agreement provided as evidence by the landlord indicates a tenancy agreement was signed on January 5, 2018. The tenant currently pays rent at \$412.00 per month payable on the first day of each month.

On December 27, 2021, the tenant's pipes froze, specifically the water supply to the manufactured home. The tenant called a plumber who arrived the next day and advised her the supply line to the manufactured home was cracked and leaking. The plumber ordered parts to repair the pipes and completed the repairs by December 29th.

A copy of the plumber's invoice was provided as evidence. The work order states:

Waterline and Drainage Thaw/ drive to location assess water line under trailer was frozen due to faulty heat tape.order and pick up material from cut out 20 feet of poly butalyne pipe and replace with pex pipe install 30 feet of heat tape and insulation.turn water service to trailer back on and check for leaks working fine at this time. (reproduced as written)

The tenant questions who is responsible for paying for the plumber's bill. The tenant has never heard of applying "heat tape" to the pipes and she has never crawled under her trailer before. She has spoken to many people, including information officers at the Residential Tenancy Branch who advise her that it is the landlord's responsibility.

At this point during the hearing, I advised the tenant that information officers of the Residential Tenancy Branch cannot provide conclusive decisions over the phone based on what they are told by a single party. Only an arbitrator can make that determination after considering all the documentary evidence supplied and the testimony of both of the parties.

The landlord testified that the tenant is responsible for maintaining the connection to the water lines. The landlord is responsible for the pipes from the sewer lines underground but anything above ground and exposed to the cold and elements is the responsibility of the tenant. Clause 16 of the tenancy agreement states:

1. **SEPTIC SYSTEM (if applicable)** The tenant will not permit water to be wasted nor to burden the septic system with water, or to permit leaks in the water supply system owned by the tenant. All water connection lines, pipes and taps will remain properly insulated over their entire exposed length. The tenant will not permit the introduction of substances or materials into the septic system that could reduce its life and/or its capacity to function properly. The sewer service connection and sewer line to the home will be protected and maintained.

To the landlord, it's clear that *"All water connection lines, pipes and taps will remain properly insulated over their entire exposed length."*

The landlord also points out that their bylaws also make it clear the tenant is responsible for maintaining the pipes and referenced the bylaws in her testimony.

Analysis

Section 7 of the Act states

If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

In order 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 this case, the onus is on the tenant to prove the landlord failed to comply with the Act, regulations or tenancy agreement and as a result, must pay for the loss or damage sustained. The tenant seeks to recover the cost of repairing the water line under the trailer that was frozen due to faulty heat tape as well as wrap new heat tape and apply insulation to the water line.

I turn to the tenancy agreement signed by the tenant. In favour of the landlord's argument, I agree that clause 16 seems to indicate that the tenant must insulate the connection lines and pipes. It would be unreasonable to expect the landlord to maintain these lines located underneath each of the park residents' trailers in the entire trailer park. Further, I note clause 10 of the tenancy agreement which states:

10. TENANT'S PROPERTY & FIXTURES

...Any alterations, additions, or improvements to the exterior of the tenant's home or to the Site require the prior written approval of the landlord, as well as any permit(s) that may be required by the municipal authority. Such improvements are the property of the tenant, and ownership is transferred to the Purchaser if the home is sold on the Site. No compensation of any kind is payable to the tenant by the landlord for Site improvements left behind if the Site is vacated in the future. Maintenance of improvements is the responsibility of the tenant, and the landlord is neither responsible nor liable for the repair, safety, construction standards or future condition of the improvements. Unless otherwise agreed upon in writing by the landlord and tenant, **the tenant is responsible for expenses and maintenance of the tenant's manufactured home and additions, the utility connection lines from the Park's service points to the manufactured home**, the setup, blocking and periodic leveling of the of the manufactured home and additions, and the Site's landscaping, fencing, rock walls, driveways and other Site improvements.

(bold underline added for emphasis)

This clause, signed by the tenant and the landlord, clearly indicates it is the tenant's responsibility to maintain the utility connection lines from the Park's service point to the manufactured home. A water line would be considered a utility connection and as such, it is clearly the tenant's responsibility to maintain it. Read in conjunction with clause 16, maintaining the water line would include wrapping insulation around the exposed parts of the water line or adding heat tape to it to prevent from freezing.

Moreover, I find that the park's bylaws, specifically bylaw 3.5 makes it clear that the tenant must take reasonable measures to prevent frost damage (reprinted below)

3.5 The owner must protect the water pipes and sewer lines on the strata lot including taking reasonable measures to:

- a) prevent damage by frost;
- b) prevent clogging of sewers (including not allowing disposal of diapers, sanitary products, and the like down the toilets), and the owner will be responsible for all costs incurred by the strata corporation resulting from the owner's failure to comply with the foregoing.

And section 4.7 of the bylaws state:

4.7 An owner shall not be entitled to claim any compensation or recourse from the strata corporation for any loss or damage to the property or person of the owner arising from any defect or want or repair of the common property, limited common property, or any part thereof, unless such loss or wilful damage fraud resulted from the negligent act of omission on the part of the strata corporation, its servants, employees, or agents.

Conclusion

I find the tenant is responsible for paying for the repairs and preventative maintenance done to the water line under the tenant's manufactured home/trailer. The tenant has not provided sufficient evidence to satisfy me the landlord is responsible for it.

Consequently, I dismiss the tenant's application seeking compensation.

The tenant's application seeking that the landlord comply with the Act was for an order that the landlord pay for the repairs to the water line which cracked in the winter. That application is likewise dismissed without leave to reapply.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

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: May 02, 2022

Residential Tenancy Branch