



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kamloops Riverview RV and Mobile Home Park
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, MNDC, RP, RR, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application to dispute an additional rent increase; for a Monetary Order for money owed or compensation for damage or loss under the *Manufactured Home Park Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to make repairs to the unit, site or property; to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 82 of the *Act*, sent via registered mail on February 06, 2013. Mail receipt numbers were provided in the tenants' documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenants appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Manufactured Tenancy Park Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the tenants entitled to dispute an additional rent increase?
- Are the tenants entitled to a Monetary Order for Money owed or compensation for damage or loss?
- Are the tenants entitled to an Order for the landlord to make repairs to the unit, site or property?
- Are the tenants entitled to reduce rent for repairs, services and facilities agreed upon but not provided?

Background and Evidence

The tenants testify that this month to month tenancy started in August 2007. The tenants pay a pad rent of \$350.00 per month which is due on the first day of each month.

The tenants testify that they received a rent increase form from the landlord approximately about a month and a half ago. The landlord seeks to increase the rent from \$350.00 to \$368.00 effective from April 01, 2013. The tenants dispute the landlords rent increase as the landlord has not complied with the *Act* with regards to the upkeep of the park and providing essential services to the tenants such as water.

The tenants testify that they were without water for nine days in January, 2013 from January 23rd to January 31st. The tenants were forced to stay in a motel for six nights but returned each evening to check if the water was back on in their home. The tenants testify that this is not the first time they have experienced a loss of water to their home it happens on a frequent basis each year and the landlord has not repaired the problem adequately to prevent it reoccurring. The tenants' states that as this is an essential service the landlord must affect permanent repairs to prevent the water supply going off again.

The tenants testify that they could not prepare meals at home due to a lack of water for food preparation or washing dishes. They could not do laundry at home and the tenants seek to recover laundry costs from the landlord. The tenants also claim gas mileage costs as these increase due to the additional trips the tenants had to make as the tenants went home from

work each evening to see if the water supply was restored, then had to drive to the motel then drive back to work the next day for eight days. The tenants each have a car as they work in different places.

The tenants testify that a year ago a few of the home owners got together and produced an agreement for the landlord and tenants to sign concerning all the repairs required in the park. The landlord returned this agreement with some amendments but failed to sign it.

The tenants seek the following amounts for costs incurred in having to move out of their home:

Motel costs - \$845.40 for six nights, (individual nights stays receipts provide in evidence)

Meal costs - \$816.00 at \$51.00 a day for two people over eight days (evidence from government meal per diem costs provided in evidence)

Fuel and mileage - \$260.68 (fuel costs for round trips from work to home to hotel X two vehicles X eight days at \$0.495 per km as calculated from the government millage information a copy of which has been provided in evidence.)

Laundry costs for four loads at \$8.00 per load to the amount of \$32.00.

The tenants seek an Order for the landlord to make repairs to the park. The tenants' testify that the landlord has not maintained the park regularly and grass and weeds grow tall on the road going up the hill to the tenants' site. The tenants' testify that this work has only been done sporadically by the landlord and the tenants and the neighbouring tenants do this work themselves.

The tenants testify that the landlord has not maintained the roads in the park. The tenants have provided photographic evidence showing a section of the road leading to their site. These photographs show that the road is torn up with at least a three inch drop in sections. The landlord has since repaired the road after the tenants threatened to get a contractor in to do the work.

The tenants testify that the landlord does not clear the snow from the roads in the park regularly and during heavy snowfall the tenants cannot access their site and have to park

there vehicles at the bottom of the hill. The tenants testify that they leave early for work each morning and the landlord does not clear the roads until later in the morning. If there is a snowfall at night the landlord will not clear the snow till later the next day and this prevents the tenants reaching their site if they are out at the time. The tenants express their concerns about emergency vehicles being able to access any elderly people if it snows.

The tenants testify that the landlord does not have the roads swept each spring after the sand has been put down. The tenants testify that they and their neighbours all sweep the roadway in front of their own sites.

The tenants testify that there is insufficient draining on the park and this causes deep erosion along the side of the roadways. This has also been an ongoing problem and the tenants have provided photographic evidence showing deep ruts and cracks on the sides of the roads.

The tenants testify that the landlord has not posted an emergency or after hours number for tenants to reach the landlord, the park manager or an emergency person in the event of an emergency occurring, the tenants want the landlord to post these numbers in a conspicuous place for all tenants to see.

The tenants seek an Order for the landlord to ensure the telephone poles on the park and the tenants' site are made safe. The tenants' testify that at present some of the poles are tilting and are rotten. The cable company came out and refused to climb the poles due to their condition. The cable company informed the tenants that the poles are the landlord's responsibility as they are located on private property. The cables also hang so low they are a hazard to the tenants. The tenants have provided photographic evidence of the poles and wires.

The tenants have provided copies of e-mails notifying the landlord of the repairs required, a copy of the agreement drawn up by the tenants listing the repairs and the landlords response to this agreement. The tenants seek a rent reduction due to these ongoing issues. The tenants' testify that their rent is higher than other parks in the area. The tenants' testify

that their park is located in a red zone which indicates that their park is in an unstable location. Other parks, not in a red zone, charge between \$300.00 and \$319.00 per month for a site. The tenants seek a rent reduction of \$250.00 per month until all the repairs are completed and the landlord starts to maintain the park.

Analysis

The landlord did not appear at the hearing to dispute the tenants' claims, therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants documentary evidence and sworn testimony before me.

With regard to the tenants claim for compensation for the motel, food, gas, and laundry costs; I have applied a test used for damage or loss claims to determine if the claimants has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I am satisfied with the evidence before me that the tenants were without water for nine days between January 23 and January 31, 2013. I further find that this has been an ongoing

problem which the landlord has not rectified and has been negligent in providing a permanent solution to the water loss issues. The tenants have provided sufficient evidence to show their actual loss for motel costs and have provided sufficient evidence of a reasonable amount to compensate the tenants for their food, gas and laundry costs while living outside of the home. I further find the tenants have shown that they attempted to mitigate the loss by returning to the home each evening after work to see if the water had been restored before the tenants booked into a motel each night.

Consequently, I uphold the tenants claim for compensation for money owed and issue the tenants with a Monetary Order for the sum of **\$1,954.08** pursuant to s. 67 of the *Act*.

With regard to the tenants claim to dispute an additional rent increase. The tenants have not provided the rent increase documentation in evidence to determine if this is a legal rent increase. The tenants dispute this increase of \$18.00 per month on the grounds that the landlord does not maintain the park and other parks in the area have a lower rent. I am unable to establish from the evidence provided that this is an illegal rent increase and the matter of the maintenance of the park is being addressed as a separate issue. The tenants have insufficient evidence to show that the park they live in has the same facilities, space or other similarities for me to determine that this rent increase is illegal or significantly higher than that of other parks in the area. A landlord is entitled to raise the rent 3.8 percent each month in 2013 plus a further proportional amount on a manufactured home park in accordance with the *Act*. Consequently this section of the tenants' application is dismissed.

With regards to the tenants application for an Order for the landlord to make repairs to the park and site; I find the tenants have provided sufficient evidence to meet the burden of proof that the landlord has not maintained the site in accordance with s. 26 of the *Act* with regard to the ongoing water leakage problem, the telephone poles and wires and the drainage issues which causes damage to the roads. I therefore find in favor of the tenants claim for an Order for the landlord to ensure these areas are repaired sufficiently to prevent hazards and further water leaks.

With regard to the tenants application for the landlord to ensure an emergency telephone number and contact person is displayed. I refer the parties to s. 27(2) of the *Act* which states:

The landlord must post and maintain in a conspicuous place in the manufactured home park, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

I therefore ORDER the landlord to ensure an emergency contact person and number is displayed in a conspicuous place, or gives this information to the tenants in writing

With regard to the tenants' application for an Order for the landlord to maintain the park by ensuring the grass and weeds are cut down regularly, that the roads are maintained satisfactorily, that the roads are cleared of snow on a regular basis and that the sand on the roads is swept away in the spring. I am satisfied from the evidence presented that the landlord has not maintained the park to a reasonable standard in accordance with s. 26(1) of the *Act* which states:

A landlord must

(a) provide and maintain the manufactured home park in a reasonable state of repair, and

(b) comply with housing, health and safety standards required by law.

I therefore uphold the tenants' application for an Order for the landlord to establish and practice regular park maintenance

With regards to the tenants' application to reduce rent for repairs, services and facilities agreed upon but not provided. I have considered the tenants claim for a rent reduction and find the tenants have met the burden of proof that the landlord has not maintained the park or ensured the tenants essential use of water has been provided consistently in accordance with the *Act*. However, the tenants seek to reduce their rent by \$250.00 per month until the landlord effects repairs to the site and park. I find this amount to be extreme in light of the

fact that the tenants rent at present is \$350.00 per month. Therefore I have limited the tenants claim to \$125.00 per month which will be ongoing until such a time as the landlord inspects and addresses any repairs to the telephone poles and lines and inspects and addresses any problems with the drainage causing the damage to the edges of the roadway. As the landlord has already repaired the damaged road surface as shown in the tenants' photographs and has repaired the water leak then no further rent reduction has been considered for these issues.

However if the landlord fails to maintain the park or if a further water leak occurs then the tenants are at liberty to file a new application for compensation and a further rent reduction.

As the tenants have been largely successful with their claim I find the tenants are entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$2,004.08**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I ORDER the tenants to reduce rent by **\$125.00** per month until such a time as the landlord inspects and addresses any repairs to the telephone poles and lines and inspects and addresses any problems with the drainage causing the damage to the edges of the roadway.

I HEREBY ORDER the landlord to establish and perform regular maintenance of the park including, cutting grass and weeds, clearing the snow regularly , sweeping the sand from the roads each spring, ensuring the tenants water supply is maintained as an essential service, and ensuring the surface of the roads are maintained to prevent cracking and torn asphalt.

I HEREBY ORDER the landlord to inspect and remedy issues with drainage to resolve hazardous damage to the sides of the roads.

I HEREBY ORDER the landlord to inspect and remedy any issues with the telephone poles and lines.

I HEREBY ORDER the landlord to provide tenants with an emergency contact person and number either placed in a conspicuous place or given to the tenants in writing.

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 05, 2013

Residential Tenancy Branch

