Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNRT, RP, FFT

Introduction

In this dispute, the tenant seeks relief under sections 25, 27, 55, and 65 of the *Manufactured Home Park Tenancy Act* (the "Act").

The tenant filed an application for dispute resolution on August 13, 2020 and a dispute resolution hearing was held on September 29, 2020. The tenant, her legal advocate, a witness for the tenant, the two landlords, and a witness for the landlords attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of this application.

Issues

1. Is the tenant entitled to compensation for emergency repair costs?
2. Is the tenant entitled to an order for regular repairs?
3. Is the tenant entitled to recovery of the application filing fee?

Background and Evidence

By way of background, this tenancy began about 28 years ago. The landlords took ownership in 2016. The tenant pays $235.00 in monthly rent.

The tenant's legal advocate submitted that the tenant seeks to recovery costs related to pumping the septic tank, in the amount of $798.00. She argued that this had to be done

because there were unsafe and unhealthy gases being caused by the septic tank. In her application, the tenant states the following:

> Septic pumping has been included in my rental agreement for the past 28 years and usually happens twice a year. Under the current ownership of [the landlords] this service has not been provided. As a result I have paid for septic pumping for my mobile as the gases were creating an unhealthy and unsafe environment for me. I want to be reimbursed for septic pumping that is to be included in my rental agreement but is no longer being provided.

The tenant and her advocate wrote to the landlords twice, asking them to pump the tank. They did not respond to these demand letters, which were submitted into evidence.

In addition to the compensation sought, the tenant requests an order that will (1) require the landlords to complete a septic tank inspection within 14 days, and (2) make any necessary repairs within 30 days. I asked the advocate the reason for asking for the inspection, to which she explained that the septic system had possibly been damaged when a tractor drove over it in 1993.

In her submissions, tenant's advocate referred me to a plumber's handwritten report, in which the plumber inspected the mobile home's plumbing system and found it to be in working order.

Tenant's advocate referred me to the park rules, which state, *inter alia,* that "Tenants shall be liable for the expense of cleaning sewer lines and tanks where the blockage is directly attributed to them."

The tenant's witness, H.C., testified that under normal circumstances, septic tanks are pumped about every 3 years. However, in his opinion, there is something not quite right with the septic field, which otherwise would not have to be pumped so often.

In his testimony and submissions, the landlord G.E. provided a comprehensive explanation for how a septic tank and field work. He explained how there is sludge on the bottom and scum on the top, and that water is in the middle. There is an outflow pipe which, under normal tank conditions, is situation just slightly below the water level. This outflow water then goes into a septic field.

Regarding the alleged odors, the landlord stated that properly fitted and working P-trap and venting stack will prevent such odors from being detected. He further said he had offered the tenant ideas on fixing the odor issue (although, he did not elaborate further on what these might be). Continuing, he then testified that the landlords are only responsible for the septic system, not all of the plumbing in the tenant's manufactured home.

The landlord referred me to a Ministry of Environment discharge effluent permit issued under the *Environmental Management Act* (the "Permit") dated May 13, 2016. I note that the preliminary portion of the Permit states that the landlord

> [. . .] is authorized to discharged effluent to the ground from a 41 unit mobile home park located in [city redacted], British Columbia, subject to the terms and conditions listed below. Contravention of any of these conditions is a violation of the *Environmental Management Act* and may lead to prosecution.

The Permit also included the following clause at 2.9:

> Septic Tank Sludge and Scum Removal
>
> Sludge and scum must be measured in the septic tanks once each year or at other frequencies specified by the Director. When the measured thickness of both the scum and the sludge layer equals one third or more of the total liquid depth, the sludge and scum must be removed from the septic tank(s). The sludge disposal must be at a site approved by the Director, or as authorized by regulation under the *Environmental Management Act.* Records of quantities, disposal location and dates of sludge and scum removal must be kept available for inspection.

The landlord pointed out that there is nothing requiring them to pump the tanks out every six months. Indeed, he described the importance of not pumping too frequently: beneficial bacteria need time to take care of the waste, and more-frequent-than-necessary pumping is of no benefit to the septic system. As to the location of the septic tank, the landlord explained that it is located about 25 feet of the home and serves as the septic tank for two homes, with one tenant in each.

Regarding the previous landlord's frequent pumping, the landlord explained that "he is a little more complacent with the pumping and did it more frequently according to the tenant's demands." He said that there is a basic misunderstanding in this dispute, and

that is that the smell is because of the tank, which it is not. The issue must be with the vent or the p-trap, or both. He referred to the tenant's plumber's letter, which makes no mention to the odor issue being the fault of the septic system.

In response, the tenant's advocate argued that the plumber's letter revealed no issues with the tenant's plumbing, and it therefore follows that the septic system must be the culprit. She then remarked that the tenant has had brown, sewage water backwashed into the sink, washing machine, and so forth.

The landlord was surprised by this revelation about sewage water, replying that "we've *never* been told that there's an actual backup of sewage." He added that they were only ever told about the odors. The landlord continued, saying that "we do regular inspections" and have determined that the tank is, or was not, overflowing. There is, he said, no evidence that there is any damage to the septic field. "It is flowing out fine," he said. And, he said that it is in fact not possible for there to be sewage backup because of the design of the tank could not allow for that.

In his final submissions, the landlord testified that the tenant's complaints start coming in almost 6 months to the day, and that the tenant is either imaging the smell or there is something wrong with the plumbing. Finally, he described a "placebo" pumping that occurred on two occasions after the tenant had complained about the smell. On these instances (the dates were not specified), the landlord had a truck come up and hook up the pump, but no actual pumping ever took place. They then asked the tenant about the issues, and the tenant said everything was okay.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Before addressing each of the tenant's claims, I first refer the read to *Residential Tenancy Policy Guideline 1 – Landlord and Tenant – Responsibility for Residential Premises,* at page 7, under the heading "SEPTIC, WATER AND OIL TANKS", which reads as follows:

> 1. The landlord is responsible for emptying a holding tank that has no field and for cleaning any blockages to the pipe leading into the holding tank except where the blockage is caused by the tenant's negligence. The landlord is also

> responsible for emptying and maintaining a septic tank with a field.
> 2. The landlord is responsible for winterizing tanks and fields if necessary.
> 3. The tenant must leave water and oil tanks in the condition that he or she found them at the start of the tenancy e.g. half full.

To clarify, then, a tenant of a manufactured home is responsible for all of the plumbing for that home, except for possible blockages to the pipe leading into the holding tank.

Is the tenant entitled to compensation for emergency repair costs?

Section 7(1) of the Act states that “The landlord must provide and maintain the manufactured home park in a reasonable state of repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.”

Section 27(1) of the Act states the following:

> In this section, "emergency repairs" means repairs that are
> (a) urgent,
> (b) necessary for the health or safety of anyone or for the preservation or use of property in the manufactured home park, and
> (c) made for the purpose of repairing
>
> > (i) major leaks in pipes,
> > (ii) damaged or blocked water or sewer pipes,
> > (iii) the electrical systems, or
> > (iv) in prescribed circumstances, the manufactured home site or the manufactured home park.

There is no evidence before me to find that the pumping of the septic tank by the tenant was an activity that fell into any of the categories for emergency repairs under section 27(1)(c) of the Act. As such, I find that the pumping for which the tenant seeks compensation is not an emergency repair. Therefore, she is not entitled to this compensation. If, by some stretch of interpretation such pumping was undertaken because of a damaged or blocked water or sewer pipe, there is no evidence that such damaged or blocked water or sewer pipes are in fact was lies under the ground. While the plumber’s report speaks to no issues with the tenant’s plumbing, but neither does it say anything about the pipe to the tank or anything pointing to the septic tank being an issue.

And, while it is not an emergency repair, there is no agreement or requirement that the landlords pump the tank every six months as the tenant would like. First, the Permit submitted into evidence requires the landlord to check the tank every year, and then empty it accordingly. There is no evidence submitted by the tenant to show that the landlords are in contravention of the Permit. Second, the landlord's testimony about the "placebo pumping" are, I find, rather telling. That the tenant said the odor issues were "O.K." (meaning, I infer, that there were no odors) after the pretend pumping of the septic tank strongly suggest that the odors or gases are entirely unrelated to the pumping of the tank.

Further, I note that the septic tank services two homes. If there were issues with the emptying of the tank and the frequency thereto, one would expect similar issues being experienced at the second home. No one from the other serviced home gave evidence that such issues exist. Which leads me to the conclusion that whatever the source of the odors, it is not, on a balance of probabilities, something related to the tank being pumped less often than every six months.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving her claim for compensation for emergency repairs. This aspect of her application is dismissed without leave to reapply.

Is the tenant entitled to an order for regular repairs?

As above, there is no evidence that the pipe leading to the tank, the septic tank itself, or the septic field are in a condition that they require repair. It should be reiterated that the onus falls on the applicant to prove that repairs are needed; the onus does not shift to the landlord to show that repairs are not needed.

Certainly, if the tenant incurs expenses in having the pipe inspected, and the pipe is found to be blocked, then the issue of negligence would give rise to either compensation or a potential order for repair.

However, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving her claim for an order for regular repairs. This aspect of her application is dismissed without leave to reapply.

Is the tenant entitled to recovery of the application filing fee?

Section 65(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the tenant was unsuccessful, I dismiss her claim for reimbursement of the filing fee.

Conclusion

I dismiss the tenant's application without leave to reapply.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: September 30, 2020

Residential Tenancy Branch