Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Timberland Properties Inc. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, RP, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order to reduce the rent for repairs, services or facilities agreed upon but not provided, and for an order for the Landlord to make repairs to the unit, site or property; and to recover the $100.00 cost of her Application filing fee.

The Tenant, her counsel, L.F. ("Counsel"), and an agent for the Landlord, D.A. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties confirmed their email addresses at the outset of the hearing, as well as confirming their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

The matter was adjourned from the initially scheduled hearing date of May 5, 2020, because the Tenant had not served the Landlord with her evidence. Further, the Tenant had retained counsel at the local Law Centre, however, the Law Centre's Spring term ended early, because of the Covid19 state of emergency. The Landlord said that the supervising lawyer at the Law Centre had addressed a proposed adjournment in an email, saying that it be reconvened once the state of emergency is ended or at the earliest, or after September 9, 2020. As a result, I adjourned the hearing and reconvened it on September 11, 2020.

At the end of the hearing, the Parties appeared close to settling the matters themselves. Consequently, I gave them two weeks to resolve the matters, and to let me know if they had settled their issues or not. On September 29, 2020, the Tenant called the RTB to advise that the Parties were unable to resolve the matters themselves; therefore, I will decide these issues, based on the testimonial and documentary evidence before me.

These matters have been previously adjudicated by the RTB and Orders have been made by other arbitrators. The file numbers for these cases are set out on the cover page to this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a rent reduction, and if so, in what amount?
- Should the Landlord be ordered to make regular repairs, and if so, what repairs?
- Is the Tenant entitled to the recovery of her $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on July 1, 2006, with a monthly rent of $588.00, due on the first day of each month. The Parties agreed that the Tenant did not pay the Landlord a security deposit or a pet damage deposit.

The Parties have been through arbitration in the past. A previous decision dated October 24, 2016, detailed and analyzed the history of this manufactured home site, and that previous RTB orders that have been made. The October 24, 2016 decision gave the following background of the Parties' situation.

> It appears from a previous arbitrator's decision that this park was developed in 1970. It is set in a hilly, heavily wooded area with creeks running through it.

There are 161 sites in the park.

. . .

The landlord is a large and experienced park owner and operator. It bought the park from the original developer in January 2007. Since buying the park the landlord has made a significant investment by switching the park from a septic system to a sewer system and upgrading the sewer system. The landlord testified about the regulatory process that had to be satisfied before implementing these changes. The tenants' advocate agreed with the landlord's general description of the regulatory requirements in this setting.

. . .

The current tenant of 115 bought this unit in July 2006, just a few months after the previous decision was rendered and just a few months before the current landlord bought the park. She testified that her home is a 1978 12' by 60' manufactured home. In 1992 a 10' by 30' addition was added to the home. When she bought the home, the addition was unfinished. She also testified that when the previous landlord had helped the previous tenant with the construction of the addition.

She bought the home for $1000.00. She then spent $20,000.00 in improvements including insulating and dry walling the addition; adding a subfloor; and installing laminate flooring.

The photographs and the oral testimony of both sides show that this site is a mess. In addition to the materials listed in the previous arbitrator's decision several rows of tires were also used in the construction of the retaining wall. The tires are now sliding free and they; together with all of the assorted other materials used in the construction of the retaining wall are sliding downward. I find that all of this material was added before the tenant bought this property.

. . .

One of the issues is who is responsible for the costs related to ensuring that the addition to the manufactured home is level and secure on the site.

In essence, the landlord questioned whether the addition was built to proper standards and whether this lack of proper design was the reason problems are being experienced with this addition. The tenant's advocate argued that the problem is not the structure but the site itself. In her oral submission the advocate stated that when decks and sheds are built, they are built with the expectation

that they can bear loads. Actually, that is only true of decks and additions that have been properly designed and which are built on properly designed footings or foundations.

The result of the previous decision is that any improvements to this site made by previous tenants became the landlord's improvements and the landlord's responsibility. For this site alone, I find that the improvements referred to in that decision include the retaining wall as well as the supports under the addition. My reasoning is that not only was the previous owner aware of the construction of the wall and the addition, but he actively participated in the construction of the addition. By doing so he assumed an obligation to the downhill tenant that the structures added to this site would not pose a risk to them. Further, if he did not actually know that the current tenant finished the interior of the addition thereby increasing the weight of that addition and took active measures to prevent her from doing so, the possibility that someone in the future might do so should have been something he considered when the addition was first built. This is especially so when one remembers that the interior of the addition was completed in the months after the previous decision was rendered and before the park was sold to the current landlord.

Consequently, I find that the landlord has an obligation to ensure that the manufactured home and the additions that were allowed by the previous landlord are stable; that neither the addition nor the debris that comprises the retaining wall slide down on unit 114; and that the pad has a proper driveway. It appears that most of this may be accomplished by a properly designed and properly constructed retaining wall

. . .

I order the landlord to:

- Immediately arrange for inspection by and reports from a qualified geotechnical engineer and a qualified civil engineer, (one that is not related to the landlord), at its' expense, that provide recommendations as to how to restore the site to stability and to reinforce/rebuild the footings under the addition so that the addition is **level and stable**.
- Provide copies of any reports received to the tenant within ten business days of receipt.
- Promptly develop a reconstruction plan based upon the above report, applicable environmental and building regulations, and current building

practices and codes. The objective of this plan is to ensure that the manufactured home site is stable; the addition is level and stable; and there is a proper driveway on the site.

- Obtain all necessary permits for the work.
- Implement the reconstruction plan as soon as possible.

I have not set actual time limits for most of the measures set out above because of the complexity of the project and the lack of information as to the usual time lines involved in any of them. However, either party may apply to the Residential Tenancy Branch for further direction, including more specific time limits; and/or a rent reduction, if appropriate.

[emphasis added]

In the hearing before me, the Parties' testimony included the following:

The Tenant said:

It's not been done. They did a tremendous rock wall out there; I'm more than happy, being able to move in and install all the things I want to fix in here. But until it's level, I can't do any of it. I've been waiting seven years for a new roof, and they won't do it until it's made level.

Counsel said:

The key question will come down to the leveling of the unit. It's [the Tenant's] position that the order is level and stable, because that was not done; it has caused the addition and the main unit to split apart. The entire thing requires leveling.

The Agent said:

Throughout the whole process it has always been the addition and the float to the addition. The ground is stable; the addition is level and stable; the boulder wall is solid and built. It's recently that the Tenant has said the home is not level.

The home not being stable and level is new to arbitration. We inherited this problem when we purchased the park. Goal posts have changed throughout the process That addition should have been removed from the house, as it was built

> too close to the slope. We moved an entire unit from the park so that we could get in the proper equipment. The onus can be put on the Landlord, but we were required by the order to build a sturdy boulder wall.

I note another RTB decision by another arbitrator, dated December 23, 2017 states:

> It should be noted that it is my impression from the hearings I have adjudicated regarding the stability problems in this park, that the landlord had been proceeding with acceptable diligence. It had stepped into a major problem, not of its own making, and has and is proceeding to correct it. It is not clear that the landlord has maintained the same diligence since the engineer's report of March 2017.
>
> Nevertheless, the dispute is fundamentally a contractual one; the tenant has rented a site from the landlord that should be stable, and it is not.
>
> Whatever the difficulties the landlord has faced in the process to remedy the current state of the tenant's site, the tenant has been suffering damage and inconvenience as a result of the unsatisfactory state of the site. The landlord is responsible for that loss an inconvenience.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Based on the evidence before me, as well as previous Decisions of other RTB arbitrators, I find that the Landlord is already under Order of the RTB to do the work the Tenant seeks with this Application. The Agent said that "…the home not being stable and level is new to arbitration.. . . Goal posts have changed throughout the process." However, as noted in highlighted portions of previous arbitration decisions, the matter of leveling and stabilizing the site has been part of the discussion since at least the decision of October 24, 2016. Accordingly, I reject the Agent's comments in this regard.

I repeat the previous arbitrator's Orders, although I have numbered them for easier reference:

> I order the landlord to:

1. Immediately arrange for inspection by and reports from a qualified geotechnical

engineer and a qualified civil engineer, (one that is not related to the landlord), at its' expense, that provide recommendations as to how to restore the site to stability and to reinforce/rebuild the footings under the addition so that the addition is **level and stable**.

2. Provide copies of any reports received to the tenant within ten business days of receipt.
3. Promptly develop a reconstruction plan based upon the above report, applicable environmental and building regulations, and current building practices and codes. The objective of this plan is to ensure that the manufactured home site is stable; the addition is level and stable; and there is a proper driveway on the site.
4. Obtain all necessary permits for the work.
5. Implement the reconstruction plan as soon as possible.

[emphasis added]

As the matter has already been decided, the legal principle of *res judicata* prevails, and I am left to take the next steps in setting specific time limits and rent reductions regarding the Orders that have already been made. In this regard:

- I Order that the Landlord comply with the above noted Orders of the decision dated October 24, 2016, as soon as possible;
- I Order that the first two orders in the above noted list be completed by November 30, 2020;
- I Order that the third and fourth orders be completed by December 31, 2020;
- I Order that the reconstruction work in the fifth item be started by January 31, 2021, and completed by March 31, 2021.

I find that these matters have gone on for far too long, as evidenced by the previous arbitration decisions and orders. Accordingly, I find that (i) the Landlord's failure to comply with the previous RTB orders, as well as (ii) the Agent's suggestion that the Tenant's claim to have the site leveled and stabilized is new are both unconscionable and worthy of condemnation. As a result, and pursuant to sections 7, 27, 32, and 65 of the Act:

I Order that the Tenant is not required to pay any pad rent until the work has been completed, as set out in my Orders and those from previous arbitration decisions between the Parties.

I also find that the Tenant is entitled to recovery of her $100.00 Application filing fee

from the Landlord. I, therefore, grant the Tenant a $100.00 Monetary Order from the Landlord pursuant to sections 67 and 72 of the Act. The Tenant is free to re-apply to the RTB for further compensation and other remedy, should the Landlord fail to comply with the Orders contained in this Decision.

Conclusion

The Tenant is successful in her Application for relief from the Landlord in terms of Orders requiring the Landlord to level and stabilize the manufactured home site, as has been previously ordered by other RTB arbitrators in past years. Given the Landlord's failure to comply with prior RTB orders that have required the Landlord to do just as the Tenant has claimed in this Application, the Tenant is authorized to not pay any pad rent until the work required in this Decision has been completed.

The Tenant is also successful in her claim for recovery of the $100.00 Application filing fee. I grant the Tenant a $100.00 Monetary Order from the Landlord.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: October 11, 2020

Residential Tenancy Branch