

Claim No: 330527

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Conrad v. Havill's/Northland Mini & Mobile Sales Ltd., 2010 NSSM 53

BETWEEN:

JUDY CONRAD

Claimant

- and -

HAVILL'S/NORTHLAND MINI & MOBILE HOMES SALES LIMITED

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on August 3, 2010

Decision rendered on August 10, 2010

APPEARANCES

For the Claimant self-represented

For the Defendant Alan Havill, owner

BY THE COURT:

[1] The Claimant rents space in a mobile home park owned and operated by the Defendant.

[2] The claim seeks damages of \$3,382.25 to cover the cost of repairs that she says she will have to make to her home as a result of alleged wetness at her site that she claims is causing settlement of the supports and deterioration of some of the structure.

[3] The brief history is that the Claimant brought her home to the park in 2004 and placed it on a “pad” that had been prepared by the Defendant. As I understand the evidence, it is the responsibility of the park owner to create the pad; i.e. to build it up the area with gravel and a moisture barrier. The home owner arranges for the home to be supported on concrete blocks, with wooden shims used to adjust the level. Once the home is supported and levelled, it is customary to install a “skirt” around the perimeter of the building to conceal the supporting structures. The skirt consists of siding, mounted on a wooden frame.

[4] The Claimant says that everything was fine until about 2007 when there were new water pipes installed in the park. From then on, she says, there has been water pooling in the area near and under her deck, and the pad underneath the home is wet and unstable, causing some settlement of the concrete blocks and, in turn, leading to some cracking around some windows in the home. She also complains that there is a constant smell of mould or mustiness, which makes it unpleasant to sit on the deck when it is at its worst.

[5] The Claimant says that she re-levelled the home in 2008, and that it needs to be done again because of the settlement problem.

[6] The money claimed includes an amount for re-levelling (\$600 plus HST), a further \$1,142.91 to replace a window that is cracked because of the home shifting, and \$1,782.25 for other interior repairs. These amounts are based on an estimate prepared by a contractor that was retained by the Claimant's insurance company. It should be noted that the insurer declined to pay the loss, citing exclusions in the insurance policy.

[7] Alan Havill is the owner of the Defendant company. He testified to a number of facts which are relevant to the claim.

[8] First of all, he denies that the pad is deficient in any respect. He says that it is performing as it should. He recently went under the home to inspect and take pictures, which he says show that the pad is dry and the concrete blocks appear well supported.

[9] He noted that the Claimant herself was responsible for installing the blocks and mounting the home thereon, and that he cannot be responsible if there is anything done incorrectly in that respect. He also was critical of the way that the skirting was installed. He notes that in places the skirting was placed too close to the ground, instead of a few inches above, which could have the effect of placing upward pressure on the structure as the ground freezes and heaves in the winter.

[10] Mr. Havill also testified that it is proper practice for the pad to have at least a 2% grade so that water will naturally run off it. Based on his inspection, the pad is operating properly.

[11] Mr. Havill is aware of the water that appears to be pooling in the yard and under the porch, and has undertaken, quite apart from the result of this court case, to take remedial action.

Legal analysis

[12] In order to succeed in this claim, the Claimant would have to show that the Defendant has breached the contract between the parties. That could be that the pad was improperly constructed in the first place, or that something has occurred to damage the pad, which falls under the Defendant's area of responsibility.

[13] There is no real evidence to suggest that the pad was improperly constructed in 2004.

[14] It does appear that there has been some movement of the home, causing cracks inside. The question of what has caused this to occur, however, is not an easy one. Mr. Havill suggested that part of the problem may be that the skirt was allowed to touch the ground, placing an upward force on the home when the freezing of the ground causes it to heave. The Claimant's Husband (who also testified) dismissed this explanation, on the basis (he says) that the 2" X 2" wood that holds the skirting together would not be strong enough to move the home.

[15] It is likely also that there has been some settlement since the home was last levelled in 2008, but this would not necessarily be as a result of anything that the Defendant did, or did not do. A built up gravel pad may seem sturdy, but it is not like a concrete footing which is anchored below the frost line and which is much more structurally stable. Concrete blocks on a gravel pad, no matter how

well designed, still have some potential for movement as the ground freezes and thaws, and settles over time. This is the very reason why having the home re-levelled from time to time is necessary.

[16] On all of the evidence, I am unable to find that the Defendant has breached the contract between the parties, causing any of the damage to the home. The Defendant supplied the pad, while the Claimant did everything else associated with putting it in place. There are other potential explanations for why the home may have shifted which are at least as probable as the theory offered by the Claimant. Since the onus of proof lies with the Claimant to prove that the Defendant caused the damage, I must find that she has failed in this respect.

[17] The issue of water on the grounds is a different issue.

[18] It does appear that there is a problem with water ponding on the land near and under the Claimant's deck, though not on the gravel pad. This is something that the Claimant cannot rectify because it is not her land, and also because she has no control over the drainage pattern in the area which causes water to run toward her area, without a sufficient means of escape.

[19] Although it is not clear what has caused this problem, the only one who can rectify it is the Defendant. This is something that Mr. Havill has already undertaken to do.

[20] There is no evidence that the excess water has caused any actual damage to the Claimant - at least not yet - apart from some inability to enjoy the use of their deck, which would be a relatively minor inconvenience. As such it is not appropriate to award any damages.

[21] It is to be hoped that the work that the Defendant has undertaken to do will bring about a full resolution to this problem, but only time will tell.

[22] In the result, I am obliged to dismiss the claim. However, because the pooling water is an ongoing problem, should it not be rectified there is nothing in this decision that precludes another claim being brought on account of excess water and deficiencies in the drainage.

Eric K. Slone, Adjudicator