Landlord and Tenant Board
Ontario

Order under Section 30 and 31
Residential Tenancies Act, 2006

File Number: SOT-11651-11

In the matter of: 8223 STANLEY AVE
NIAGARA FALLS ON L2E6X8

Between: Refer to attached Schedule 2 — Tenants

and

Marineland Of Canada Inc — Landlord

I hereby certify this is a true copy of an Order
A Billone
May 4/11
Landlord and Tenant Board

The Tenants applied for an order determining that Marineland Of Canada Inc (the 'Landlord') or the Landlord's superintendent or the Landlord's agent harassed, obstructed, coerced, threatened or interfered with them and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household. The Tenants also applied for an order determining that the Landlord failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

This application was heard in St. Catharines on February 3, 2011, February 25, 2011 and March 31, 2011. Prior to the hearing the Tenant, Barbara Stachiw asked to have her name removed from the application. The application is amended and the Title of Proceedings has been changed to remove her name. The Tenants, Bonnie Vankesteren ('BV'), Delbert Henderson ('DH'), Robert Olsen ('RO'), Judy Olsen ('JO'), Constance Topolinsky ('CT') and Landlord's representatives, Peter Mahoney and Tracy Stewart ('TS') attended the hearing on February 3, 2011. The Tenants, BV, DH, RO, JO, CT and the Landlord's representatives, Peter Mahoney and TS attended the hearing on February 25, 2011. BV, DH, CT and the Landlord's representatives, Peter Mahoney and TS attended the hearing on March 31, 2011.

For reasons attached to this order, it is determined that:

1. The Tenants have not proven that the Landlord did not provide adequate water supply to the Tenants.

2. The Tenants have not proven that the Landlord did not provide adequate snow removal at the mobile home park.

3. The Tenants have not proven that the Landlord did not maintain the roadways in the mobile home park.

4. The Landlord was in breach of section 20 of the Act because there were maintenance issues in the park, including overgrown shrubs and grass; sewage odours; and lack of street lighting. Except for the issue of light bulbs not being replaced in the street lights, I find the Landlord responded to these issues in a reasonable manner.

5. The issue of the street lighting is a minor issue and does not warrant an abatement of rent or other remedy.

6. The Landlord owner, John Holer ('JH') drove through the mobile home park several times a day every day after February 2009 for the purpose of annoying and harassing the Tenants thereby substantially interfering with the Tenants' reasonable enjoyment of the premises by harassing the Tenants.

7. The Tenants are entitled to an abatement of rent in the amount of 25%.

It is ordered that:

1. The Landlord shall pay RO and JO $1,397.50.
2. The Landlord shall pay BV $2,530.00.
3. The Landlord shall pay CT and BT $2,337.50.
4. The Landlord shall pay PM $2,750.00.
5. The Landlord shall pay DH $2,612.50.
6. If the Landlord fails to pay the amounts in paragraphs 1 to 5 on or before May 15, 2011, the Landlord will start to owe interest. This will be simple interest calculated from May 16, 2011 at 3.00% annually on the balance outstanding.

This was never paid out, Marineland appealed it and of course won. Anytime Marineland requested a review it was granted. Any of our Request to Review was denied.

May 4, 2011
Date Issued

Shirley Collins
Member, Landlord and Tenant Board

Southern-RO
119 King Street West, 6th Floor
Hamilton ON L8P4Y7

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

Landlord and Tenant Board
Ontario

File Number: SOT-11651-11

REASONS

In the matter of:	8223 STANLEY AVE NIAGARA FALLS ON L2E6X8	
Between:	Refer to attached Schedule 2	Tenants
	and	
	Marineland Of Canada Inc	Landlord

Reasons to Order SOT-11651-11 issued on May 4, 2011 by Shirley Collins.

T6 Application about Maintenance Issues

The rental complex is a mobile home park. The Tenants claim that the Landlord failed to maintain the rental complex and has not complied with health, safety, housing and maintenance standards because there are:

- abandoned mobile homes on the property that attract pests and wild animals;
- uncut grass;
- trees on the hydro lines;
- lack of water pressure;
- sewage on the property;
- fire extinguishers missing;
- drainage and flooding problems;
- severe potholes;
- lack of street lights

The Tenant spokesperson, Connie Topolinsky ('CT') submitted and testified about an email dated March 8, 2010 sent by her spouse, Brian Topolinsky ('BT') to the Landlord's representative, Tracy Stewart ('TS'). The first sentence of the email stated that BT thought he would put his complaint in writing since their previous request had been ignored. He informed TS there were street lights burnt out in the park; pot holes on the roadway; and fire hydrants missing that needed to be replaced. CT stated that BT intended to write fire extinguishers and not hydrants.

The Tenants also submitted letters dated August 6, 2009 and August 21, 2009 addressed to the Landlord from a lawyer who represented several tenants of the mobile home park during that time period. Each letter contained a list of the maintenance issues, similar to those in this application.

CT testified that maintenance issues have been raised on an ongoing basis since the Landlord purchased the property in 2004. The Tenants told the Landlord about these issues in writing and verbally on a regular basis but were always ignored. She repeatedly said there were too many dates and times to remember. The owner of the Landlord company, John Holer ('JH') has been driving through the park several times a day, every day and therefore, she said, he should be aware of the lack of maintenance in the park.

Landlord representative, TS, testified that whenever the Landlord was made aware of the Tenants' complaints, the Landlord responded. She responded to the email dated March 8, 2010 by forwarding the complaints to the appropriate employees of the Landlord. She submitted a copy of the email that contains notes to those employees. She also submitted an email dated March 16, 2010 she testified she sent to BT requesting specific information about the location of the lighting problem but she did not receive a response. CT testified that BT did not receive the email from TS.

Analysis and Findings of Fact

The Landlord's Counsel submitted that the maintenance issues raised by the Tenants happened more than one year prior to the filing of the application and therefore cannot be considered by the Board.

An application must be made by the Tenants within one year of the date the alleged breach occurred. However, it can be difficult to determine the start date where a breach of a maintenance obligation or non- compliance with standards occurs over a period of time.

The Board's Guideline #5 states, in part:

> *"The intention behind a limitation period is that the applicant has only a certain time to bring the complaint and obtain a remedy. If the applicant leaves the issue too long, it reduces the respondent's ability to answer the allegation. A unit or complex may have numerous problems which started at various times and gradually worsened to arrive at a state of non-repair which caused the tenant to apply.*
>
> *In view of the policy intent to encourage better maintenance, the Legislature cannot have intended to impose a one year limitation from the start of each breach. The breach of obligations is a continuing event. However, the tenant may not raise any item which was rectified by the landlord more than one year before the application was filed."*

In this case, some of the alleged breaches before the Board are continuing events. Some are not. The limitation period will be considered and determined directly through evidence on each issue.

The Landlord's Counsel also submits that the Landlord addressed the maintenance issues as they arose and met their maintenance obligations as required by section 20 of the Act. He also submits that the Tenants complained to authorities instead of the Landlord because the Tenants are trying to retaliate and cause trouble for the Landlord. The Landlord decided to convert the use of the park. It has been determined by the Board previously that the Landlord did what he was legally entitled to do. CT submits the Landlord intended to close the park and therefore decided not to maintain it. She said the Tenants were hesitant to complain persistently about their maintenance issues because the Landlord is "famous" for evicting people from their homes.

The decision to close the mobile home park does not relieve this Landlord from their responsibilities under the Act. The Landlord gave eviction notices to the Tenants in February 2009. Gradually, tenants have been leaving the park. The park continued to be home to some tenants after the eviction notice was served. As long as there are tenants living in the park or they are still in possession of their rental unit, they are entitled to the protection of the Act.

Section 20 of the Act states:

> (1) A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.
>
> (2) Subsection (1) applies even if the tenant was aware of a state of non-repair or a contravention of a standard before entering into the tenancy agreement.

First I must determine if the Landlord has breached Section 20 of the Act. If that determination is made, then I must consider the appropriate remedies. An abatement of rent is not appropriate where a landlord was not aware of the problem until the application was filed or if the tenant informed the landlord and the landlord responded in a reasonable time.

The Tenants are requesting $25,000 each for the maintenance issues.

Water Supply and Water Pressure

CT testified that the Landlord has turned down the water supply. At certain times of the day the water trickles out. It can take 1½ hours to do a load of laundry. Tenant, Robert Olsen ('RO') testified that he purchased his mobile home four years ago. At that time, he contacted the Landlord's management employees about the low water supply. The Landlord sent someone to look into it but the water supply did not improve. He contacted the municipality and was told that as long as there was water supplied to the unit there was nothing they could do for him. DH testified that he has learned to live with low water pressure. He could not recall if he complained to the Landlord.

CT testified the water supply was interrupted in October 2010 and in cross-examination agreed that Enbridge had accidentally cut it off and it was repaired the next day.

The August 2009 letters from the Tenants' lawyer stated that there was lack of water pressure in 3 of 4 water lines.

The Tenants did not produce evidence of the present or past water pressure levels or the standards of water pressure, municipal or otherwise, that must be met by the Landlord. I find that the Tenants have not proven that the Landlord is not providing adequate water supply to the Tenants.

Street Lights

CT testified there were street lights not working in the park. Her husband, BT, included this complaint in his email of March 8, 2010 to the Landlord.

The Tenant, Bonnie Vankesteren ('BV') testified that the street light near her home burned out and was not replaced for a long period of time. As someone who lives alone, she considered this a safety issue, especially in the winter when she returned home in the dark. The Landlord owner, JH, knew about the lack of lighting because he drove through the park daily. She testified she complained in 2006 about the light near her home. It was fixed once in August 2009 after a complaint to City Council. The bulb burned out again after 3 months. She said each time she went to pay her rent at the Landlord's office at the beginning of the month, she asked that them to change the light bulb. It was noted on some rent receipts by the receptionist. She testified that the last time she mentioned was on August 1, 2010 when she went to pay August rent. In cross-examination the Tenant was shown the 2010 records. Only the June 2010 rent receipt noted the complaint about the light bulb. The Tenant testified it was not changed until February 2011.

DH testified the light over the mailbox across from his trailer was out for two years. He said the Landlord fixed it over 1½ years ago.

TS testified she responded to BT on March 15, 2010 asking which lights he was referring to. There was no response so she assumed everything was fine. It wasn't reasonable for the Landlord's representative to assume that because she didn't receive a response to her email that the lighting was fine. A responsible action would have been to arrange for an inspection to ensure the lights were working. Clearly, from the records produced by the Landlord's representative, the Landlord was aware of the lack of lighting in June 2010, the date written on BV's receipt, and did not respond until February 2011.

Lack of snow removal

CT testified that there was a lack of snow removal in a reasonable period of time following snowfalls. The Tenants maintain that the snow should be cleared frequently as required by the Act.

An example cited by CT was that the driveway of the park was not ploughed from 9:00 a.m. until 1:20 p.m. on a particular day. They submitted a photograph of a roadway that had not been ploughed. There was also testimony from CT that BT was stuck in the snow and had to be assisted by park personnel on one occasion. CT testified that sometimes it would snow on a Friday but wouldn't be cleared until Monday. She did not give specific dates. Many municipalities permit residents up to 24 hours to clear snow. The Tenants did not submit any standard that they believed the Landlord had to meet. I am not satisfied there is a breach of section 161 of the Act that requires a Landlord remove snow from mobile home park roads.

Fire Extinguishers

TS submitted a handwritten memorandum dated October 1, 2009 indicating that, in response to one of the letters from the Tenants' lawyer in August 2009, the fire extinguishers were inspected. One missing extinguisher was replaced. Three had broken glass where bees had nested. BT then wrote in the March 08, 2010 to TS that the fire hydrants were missing and needed to be replaced. She interpreted that to mean extinguishers and responded. The Landlord's representative submitted a handwritten page indicating the location of the extinguishers and action taken. I find that the Landlord addressed this issue when the Tenants brought it to their attention.

Potholes

The Tenants testified that there are potholes in the roads throughout the park, contrary to section 32 of the Residential Tenancies Act (the 'Act'). Photographs of potholes were submitted as exhibits.

CT testified the Landlord ignored the potholes. She said some tenants had to have their cars repaired due to damage caused by the potholes. She testified she called the Landlord quite a few times.

Tenant, Delbert Henderson ('DH') testified he told the Landlord the driveway was a mess of potholes and dust and dirt on more than one occasion. He mentioned the problems again to two or three of the Landlord's workers. He said they fixed the potholes a couple of times a year with a grater.

TS testified that potholes are an ongoing problem, usually in the spring time at which time the Landlord arranges for grading of the roads. She submitted memorandums relating to the pothole maintenance.

The Tenants did not provide specific information about the dates they found the potholes to be serious enough to complain about, when or if they complained to the Landlord about the potholes and what the Landlord did or did not do about them or the damage that was done to vehicles. The March 8, 2010 email to TS contains a complaint about potholes. However, the Tenants agree that there were times the Landlord responded. Based on the testimony of TS and DH, I am satisfied that the issue of potholes has been addressed by the Landlord each spring. That being the case I can only consider complaints by the Tenants since the spring of 2010. They have not provided specific dates of complaints beyond March 8, 2010 about potholes in the past year.

Abandoned homes, sewage, garbage, overgrown trees, shrubs and grass

The Landlord decided to convert the mobile home park and therefore many of the residents have moved out of the park. Some have abandoned their mobile homes. The Tenants testified that there is overgrown vegetation and weeds on the vacant and abandoned properties, attracting nuisance animals. One abandoned trailer was located next to the trailer of BT and CT for two years. After the eviction notices were served, the Landlord applied to the Board for an order declaring the trailer abandoned. It was then demolished.

The Tenants testified that the trees on the property have never been pruned. One tree or shrub is at the entrance of the park on Stanley Avenue in Niagara Falls. The Tenants submit that this is a safety concern for drivers. TS testified that the trees at the entrance of the park are on municipal land and therefore the Landlord is not responsible for them. I am satisfied that the trees outside the entrance to the park are on municipal property and not the responsibility of the Landlord.

CT submitted photographs she took on December 1, 2009 of the garbage and said no maintenance person has been assigned by the Landlord to keep the park clean. She said she complained to employees when she saw them and mentioned it to an employee in the management company from 2006 until about a month before the hearing. When asked if she had

complained within the last year she said that she complained to outside authorities. She also said the JH, the Landlord owner, already knew because he was in the park on a regular basis.

In cross-examination CT testified she didn't know when she reported the overgrown grass and shrubs but the owner saw the park every day. She was asked if she ever complained about the garbage to the Landlord and again said the owner is in the park every day and therefore he is aware of the garbage.

TS testified that vandalism and dumping has been a problem that the Landlord has been trying to address. This was one of the reasons for installing a chain as a barricade on one of the roadways to prevent dumping. The Landlord put dumpsters in strategic places in the hopes that people would use them rather than leave garbage strewn about.

The Landlord tried to remove garbage where there is a public health issue, for example, food garbage. They tried to board up trailers that had the windows and doors removed by the owners. She also said the process of the Board was used to declare trailers abandoned so that the Landlord could move in to clear the trailers and debris.

The Tenants testified that sewage discharge on the property is an ongoing concern. CT submitted reports from the Health Unit dated February 22, 2010 and June 1, 2010. The Landlord was contacted by Public Health. The reports noted the Landlord would get back to Public Health however the Tenants did not know the outcome. CT also submitted photographs of what she described as inadequate drainage on the property.

The Niagara Public Health Report dated February 22, 2010 identifies the report issue as CT complaining about the raw sewage smell in the air and sewage coming out of the ground. An inspection was done on March 1, 2010. It is noted by the writer that there was stagnant water observed by several trailers and sewage odour in the park. It was also noted that the Landlord's manager would be consulted.

In the Niagara Public Health Report dated June 1, 2010 the issue identified was about tall grass and stagnant water. It is noted that CT complained there was standing water on empty lots where trailers were demolished and behind units. She also complained of tall grass in numerous locations throughout the park. A site inspection was conducted on June 4, 2010. The following is noted by the report writer: Health Board states park is not being maintained?????

> *Went to site of complaint. Looks like park is not being maintained, grass is very long every where in the park. Standing water present on 2 empty lots, took 10 dips at each site no larvae found. Dipped in several puddles and areas along the road to(sic) larvae found. Standing water present in area behind unit 26, took 5 dips and found 4 larvae in total.*

On June 9, 2010 the report writer spoke with TS. The writer was informed by TS that the Landlord was not allowed to remove items or touch the tenants' property until after 60 days when a tenant moves out and that people were using the park to dump garbage and debris.

A Landlord memorandum dated August 5, 2010 sent to the owner and several employees from TS states, in part:

The Fire Department requires we ensure that all vacant buildings are secured and that broken windows and doors are boarded shut to deny any access.

*The City of Niagara Falls and Niagara Public Health have also told us that we **must** do the following work at Green Oaks:*

- *Ensure grass is cut and no long grass on common areas or vacant sites.*
- *Remove all old paint, TV's and tires that could collect stagnant water*
- *Ensure garbage that smells or attracts animals is picked up from common areas and vacant sites.*
- *Ensure that there is no standing water in any areas and that the ditch is clear for water flow. To protect against West Nile, we need to eliminate standing water or purchase a pellet to stop mosquito larva – product is available at Canadian Tire (Formal name BTI but sold as Vectobak).*

I am satisfied on the basis of the Public Health Report and the Landlord's August 5, 2010 memorandum that the Landlord was in breach of Section 20 of the Act, however, the Landlord's representative maintains that they responded when the issues were brought to their attention by the Health Department. The Landlord's representative produced maintenance book records and testified to the actions that were taken by the Landlord.

The Tenants did not call any Public Health Inspectors to testify about any orders that may have been issued to the Landlord or the compliance or non-compliance of those orders. The Tenants' testimony on the maintenance issues was disjointed and confusing. They had difficulty providing dates or times of incidents and several times. They often gave vague testimony and made broad, general statements. This does not give the respondent a fair opportunity to respond or rebut the testimony.

The Tenants' maintenance application is dismissed.

T2 Application

There is anger and hostility toward the Landlord. Several Tenants are retirees and long time residents who have lost their homes because the mobile homes are too old to move and therefore had to be abandoned. Some had invested a substantial amount of money improving their homes just in the last few years not knowing the Landlord's plan for conversion.

The Tenants made some impassioned arguments with no basis in law. They claimed that the whole eviction process has been an interference with their reasonable enjoyment of the premises. They claimed that the Landlord owner harassed them by telling them that if they didn't move their homes, they would not receive the $3,000.00 compensation they are entitled to under the Act. They said the Landlord retained a lawyer who sent letters to them about a website they created to inform the public of their evictions. Just as tenants have the right to pursue all legal avenues, so do landlords. It is not harassment for a party to assert their legal rights.

The Tenants also claimed that all of the residents of the mobile home park were evicted except the owner's son. The Tenant's submission that this interferes with their reasonable enjoyment of the rental unit is not reasonable. It is reasonable to believe that in most cases a parent would be

able to make arrangements to have their son move out when necessary without making an application to the Board.

The Tenants asked to call a witness who is a real estate agent to rebut testimony of TS. I did not allow them to call this witness at that particular time because TS had not yet testified and it was to rebut testimony TS had given in a previous case. The Tenants did not ask to call this witness later in the hearing.

Throughout the hearing the Tenants testified that JH drove through the mobile home park several times a day, every day. Their testimony was consistent and credible on this point. BV testified that they could not keep their window blinds open because the owner drove by three to five times a day and peered into their homes. The photographs submitted on the T6 application show that the trailers are very close to the road. Tenant, Robert Olsen ('RO'), a night shift worker, testified he saw the owner drive through the park two to three times a day. He felt like the Landlord was "kicking the tenants in the shin" with this behaviour. CT and DH testified they saw him as well. The Tenants testified JH would make comments to them about wanting them to move out. They submitted a statement signed by several witnesses about one incident on September 15, 2010. JH was driving in the park at 9:10 p.m. He stopped outside the window of Tenant, Paula Millard, and told her to get out and he was turning everything off. A photograph was submitted of JH sitting in his vehicle looking into the Tenant's window. It was dark outside yet JH is close enough to be clearly seen sitting in his vehicle looking into the window. The Tenants submitted a police incident number.

Past decisions of the Board have held that there must be a pattern of behaviour to constitute harassment. While the Act does not define "harassment", the term is generally understood to mean words, gestures and actions which tend to annoy and alarm. The Landlord's Counsel did not dispute that the owner drove through the park every day but he said it was not as often as the Tenants testified to.

Certainly a landlord has a right to drive through his own property however the Tenants suggested that JH engaged in this behaviour in an effort to have them vacate the premises as soon as possible. Based on the evidence, the direct testimony of the Tenants, I accept their suggestion and find that JH, the Landlord owner, who has a property manager and other employees, took it upon himself to drive past these homes several times a day, every day for the purpose of annoying and harassing them. I therefore find the Landlord substantially interfered with the Tenants' reasonable enjoyment of the premise.

There was no evidence that the Landlord visited numerous times a day prior to the eviction notices. These Tenants took steps to try to stop the Landlord's conversion because they were about to lose their homes. The eviction notices were issued in February 2009. The Landlord owner knew the Tenants were upset and angry yet he decided to compound their problems by making the situation far more difficult for them at a very stressful time while they were trying to continue living normal lives in their homes.

Remedies

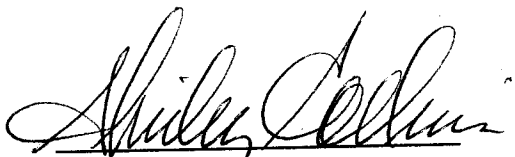
Section 31 of the Act sets out the remedies which the Board may include in an order if a finding is made in respect to actions of the Landlord including substantially interfering with the tenant's

reasonable enjoyment of the premises; and harassment. In my view, an abatement of rent is justified in this case. The Tenants are requesting $25,000.00 each and the return of all of their rent. This amount is excessive and cannot be justified.

I am satisfied that the Landlord started this behaviour after the eviction notices were served on the Tenants in February 2009. This was an ongoing harassment and therefore the one year limitation period does not apply. However, the Tenants moved out at different times and therefore were subjected to this harassment for different periods of time. They paid different amounts of rent.

RO and his spouse, Judy, ("JO") moved out of the rental unit on April 1, 2010. Their monthly rent was $430.00. BV paid $460.00 monthly; CT and BT paid $425.00 monthly; PM paid $500.00 monthly; and DH paid $475.00 monthly. These Tenants were residing in the park at the time of their application.

A reasonable amount of an abatement of rent is 25% commencing March 1, 2009 until the date of their move or the month of the application, whichever is earliest. RO and JO are entitled to $1,397.50. BV is entitled to $2,530.00. CT and BT are entitled to $2,337.50. PM is entitled to $2,750.00. DH is entitled to $2,612.50.



Shirley Collins
Member, Landlord and Tenant Board

May 4, 2011
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