Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: O & FF

Introduction:

This hearing dealt with an application by the landlord seeking an Order of the Director that the tenants comply with a park rule of the manufactured home park. Both parties attended the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

Issue to be Determined:

Is the new park rule established by the landlord in October 2008 enforceable?

Background and Evidence:

This tenancy began on November 1, 2007 for the monthly pad rent of $250.00. The current pad rent is $259.25. The parties signed the tenancy agreement on November 1, 2007 and there was a three page addendum included with the tenancy agreement. It is difficult to establish from the evidence submitted by the parties as to whether I have been provided a copy of the original addendum. I have received two documents: 1. is a five page document of the park rules established in July 2007, and 2. is a three page document of the park rules changed in October 2008.

The dispute between the landlord and the tenant centres on the park rule respecting parking. In the July 2007 document under the subject, **Rent**, the wording is as follows:

> ***Rent*** *includes a parking space for two vehicles only. Parking for additional vehicles such as trailers, campers, utility trailers and boat with trailer, etc. to be arranged with the management.*

The October 2008 document, under the #3, changes the wording to:

> *Rent includes parking spaces for two passenger vehicles only, (cars & lights trucks). Parking for additional vehicles such as all recreational vehicles, utility trailers, boats with trailer, etc. may be arranged by the management.*

On August 17, 2008, before the park rules were changed the tenants purchased a small camper truck\motor home. The tenants claimed that they discussed the purchase with the park manager and that it was not an issue until after the landlord changed the park rules in October 2008. The camper truck is approximately 19 feet long and reviewing

the photograph it appears to be a small or light truck with a camper addition over top the cab and instead of a regular box.

Both parties referred to this vehicle as a small “motorhome”. After the park rules were changed in October the park management and the tenants discussed the issue and apparently the tenants agreed to move the vehicle from their driveway. The tenants moved the vehicle over to the visitor parking area on the assumption that this was an adequate arrangement with the park. However, on November 1, 2008 the tenants received a letter from the park management stating this arrangement would not work. The landlord acknowledges in this letter that additional parking can be arranged with them, but at this time there is no room for the tenants’ vehicle. It is in this letter that the landlord defines the tenants’ vehicle as a “recreational vehicle”. The landlord requests that the tenants arrange for off site storage of their vehicle within two weeks of receiving the letter.

The landlord followed up the November 1, 2008 letter on November 15, 2008 indicating to the tenants that they were in material breach of the tenancy agreement and park rules as they failed to move their vehicle off site as requested. The landlord granted the tenants an additional week to comply.

The tenants responded to the November 1, 2008 letter on November 4, 2008 making the following points:

- There was a telephone conversation with the park manager on August 8, 2008 that a small motor home would be acceptable;
- That the vehicle is not being stored on the driveway, but rather, is an actively used second vehicle; and
- The tenants state in this letter that their motor home is not a recreational vehicle or campervan.

The tenants’ lawyer responded to the landlord’s second letter on November 24, 2008. Counsel for the tenants wrote, in part:

> “*I note the rent includes parking for two vehicles. This is exactly what the* [tenants] *have. Their second vehicle is a small motor home (4 cylinders). It is insured and being used. It is not therefore not an “additional vehicle”. The Rules list “recreational vehicle” with “boats with trailers and utility trailers” – basically things that are not driven and kept insured. Therefore it is storage that the Rules seek to address, not parking of an insured vehicle. The fact is the* [tenants] *have two vehicles. They are allowed to have two vehicles. The fact that one is a small motor home should not impact that fact. It is being used not stored. Surely you can appreciate the difficulties of having your second vehicle parked a distance from your home. They have ample parking and use the vehicle.*”
>
> [**Reproduced as Written**]

It is the submission of the landlord that the tenants are in material breach of the tenancy agreement and park rules and that the tenants are attempting to dictate and undermine the authority of the landlord to make and change park rules.

The landlord submits that the tenants are attempting to define what is or is not a recreational vehicle. It is the landlord's position that the tenants' vehicle is a "recreational vehicle" and therefore cannot be parked in the tenants' parking space. The landlord submits that, "…Park rules does not contemplate the use that a recreational vehicle may be put to, whether or not the RV insured or how many cylinders the vehicle may have or how much the vehicle may weigh. It prohibits the onsite parking/storage of ***all vehicles*** that are neither cars nor light trucks."

The landlord denies the tenants allegation that the tenants ever received verbal permission to purchase and store a motor home onsite. However, the landlord acknowledges that the discussion was respecting whether the intended vehicle was a van or camper van. The landlord expects the tenants to comply with the rule and have their vehicle moved offsite. They also seek a determination as to whether this is a material term for which failure to comply could result in the end of the tenancy.

The tenants argue that the landlord was aware of and verbally agreed that the vehicle they purchased would be acceptable for the park. They submit that it is not recreational vehicle but rather their second vehicle meeting the terms of the original agreement. The tenants submit that the landlord's position in not supported under their tenancy agreement and that they have the right to have this second vehicle which meets the definition of a light truck.

Analysis:

Section 32 of the *Act* provides that a landlord, or park committee, may change, remove or establish park rules for the purpose of governing the operation of a manufactured home park. Changes to the rules can apply to new tenancies; however, changes to rules for tenancies in existence already can only be made by agreement of the tenant or in accordance with the regulations. The regulations state that a landlord can change existing rules, without written agreement of the tenants, for the following reasons:

- The rule will promote the convenience or safety of the tenants;
- The rule will protect and preserve the condition of the park or the landlord's property;
- The rule regulates access to or fairly distributes a service or facility; or
- The rule regulates pets in common areas.

Any change to the rules must be fair to all tenants and must be clear enough that a reasonable tenant can understand how to comply with the new rule. Further a change to a rule cannot change a material term of the pre-existing tenancy agreement.

The new rule implemented by the landlord effective November 1, 2008 (changed October 14, 2008) can only be enforced against these tenants to the point that it is not

inconsistent with a material term of the original tenancy agreement. I find that the rule respecting parking, under **Rent**, in the original tenancy agreement was a material term allowing the tenants the right to park to vehicles at their site. The original term did not classify or define what was considered a vehicle. However, the former rule did state that trailers, campers and boats with trailers were to be parked with arrangement with the management. I understand this to mean that additions to vehicles, or items which were pulled by vehicles could only be parked with the authorization of the landlord.

The new rule has classified that vehicles are cars or light trucks. The landlord has also changed the rule to include recreational vehicles in addition to trailers to be excluded "vehicles" unless permission was granted by the landlord.

I find that this new rule cannot be enforced upon the tenants as it is inconsistent with the original material term of their tenancy agreement allowing them to park two vehicles at their site. The tenants purchased this vehicle prior to the change in the park rules and this vehicle was acceptable under the former term. The landlord is attempting to enforce a change in the terms of the original tenancy agreement by enforcing this new rule. The *Act* does not permit this.

I deny the landlord's application. I find that the parking of the tenants' second vehicle is consistent with the original material term of their tenancy agreement and that the new rule cannot breach the original material term. The tenants are within their rights to park their second vehicle at their site.

Conclusion:

I deny the landlord's application having determined that the new park rule is inconsistent with the original material term of the tenancy agreement allowing the tenants to park two vehicles at their site. Therefore, the new rule is not enforceable against these tenants and they may continue to park their vehicle at their site.

Dated February 11, 2009.

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Dispute Resolution Officer