

DECISION

Dispute Codes: OLC and O

Introduction

This application was brought by the tenant seeking an Order that the landlord comply with her tenancy agreement, particularly with respect to the boundaries of the manufactured home park site.

Issue(s) to be Decided

This application requires a decision on whether a site plan prepared by the landlord encroaches on a boundary claimed by the applicant tenant and to which she has a right under the rental agreement, and whether the landlord should be ordered to honor that boundary.

Background and Evidence

The applicant tenant has been a resident on the site in question since April 15, 1991 and she formerly resided on a site across from it from 1986. The current pad rent is \$525 per month.

This matter arises, in part, from the fact that when the landlord purchased the park, there were no site plans, and he gave evidence that site plans were not required until

approximately the year 2000. The landlord stated that he now provides plans on the sale of a manufactured home or on request as the need arises. About 60 per cent have now been completed.

In the present matter, the tenant gave evidence she saw the larger site as represented by the vendors as a matter of key importance when she bought the site, although there is no documentary evidence of the site boundaries at the time.

The matter has now come into question as the neighbouring site has been sold and as has been his practice, the landlord is in a position of having to provide a site plan. This has been somewhat complicated, as the former owner of the neighbouring site was notorious for not caring for the property around his home. Over time, the applicant tenant has taken on much of the work on that part of the property she regards as hers and which the landlord now seeks to define as part of the neighbouring site.

With drawings and pictures, the landlord has illustrated that the boundary suggested by the applicant tenant places the line over 18 feet from her structure and six feet from the neighbouring structure. The line proposed by the landlord places the line approximately equidistant from both structures, and as illustrated by photographs and an altered rock structure, appears to represent a natural and intended boundary between the sites.

The tenant stated that the landlord had agreed with the tenant's earlier request to construct a fence along her version of the boundary line, but the landlord is equally certain that conversation did not take place.

The landlord stated that the proposed line gives equal advantage to both tenants and that the pad rent is the same for both.

He stated that he had consulted with the applicant tenant and had initially been of the opinion that she accepted the plan he had proposed.

Analysis

In the absence of documentary evidence, I cannot accept the applicant's verbal evidence of a representation made by the vendor 19 years ago as firm proof of the size of the site.

Given the creation of regulations somewhere around the year 2,000 requiring site plans, I find that it falls as a matter of duty for the landlord to create site plans and to establish boundaries.

I accept the evidence of the landlord that he has attempted to do so in the most reasonable way possible and had no vested interest in the matter beyond his wish to manage the park in an efficient, considerate and fair manner.

In the present matter, while I appreciate that the applicant tenant has lost the use of some space, I find that the landlord has drawn the dividing line between the sites in a manner that attempts to balance the interests of the incoming tenant with those of the applicant tenant.

In the absence of overriding documentary evidence to the contrary, I find that the landlord has acted within his rights and duties to administer the park and balance the interests of individual tenants with the collective interests of all tenants.

Conclusion

Accordingly, I decline to issue any order for the landlord to comply, or to intervene in the landlord's establishment of the proposed site plans as they appear to be as any reasonable person would draw them in similar circumstances.

The application is dismissed without leave to reapply.

March 3, 2010