

DECISION

Dispute Codes OC, FF

Introduction

This hearing dealt with an application by the landlord for an order that the tenant comply with the park rules and tenancy agreement. Both parties participated in the conference call hearing.

Issue to be Decided

Should the tenant be ordered to comply with the park rules and tenancy agreement?

Background and Evidence

The parties agreed that the tenancy at this site began in 2008 and that the tenant owns another manufactured home in which he previously lived at another site in the same park. The landlord claimed that the tenant had failed to comply with 3 of the park rules and one term of the tenancy agreement. These rules are set out below and numbered 1-3 for the convenience of referring to them throughout this decision. The rules are reproduced as written. The term of the tenancy agreement for which the landlord seeks compliance is set out below the rules.

Rule #1: Lots are 0 lot line with neighbouring residents allowed access by a pathway of 2.5 ft (76.2 cm) for cleaning windows etc. No plants, bushes or items should be placed up against the neighbour's home that would restrict reasonable access.

Rule #2: All additions and alterations to the Resident's home and home site including accessory buildings, fences, decks, patios and skirting must be approved in writing by submitting a detailed plan to the Community Director ... a complete list of construction materials to be used for exterior improvements and a completion date within a reasonable time frame generally 1-3 months, will also be required.

Rule #3: A maximum of (3) operative and insured vehicles may be parked on Resident's driveway (space permitting) but should not be overhanging on the street, curbs or landscaped areas of the homesite.

Tenancy Agreement: Invited guests (any person not listed as either tenant or occupant on page 1 of this Agreement), who stay more than a total of 21 consecutive days in any calendar year, must have prior written consent of the landlord for this purpose. When a person who is not listed as a tenant or occupant, resides in the manufactured home or on the manufactured home pad (site) for a period in excess of 21 consecutive days in any calendar year, without the permission of the landlord, they shall be considered to be occupying the manufactured home pad (site) contrary to this Agreement and shall be considered a trespasser. Failure to apply and obtain the necessary approval of the landlord in writing is considered a fundamental breach of this Agreement.

With respect to Rule #1, the landlord objected to the tenant keeping a small wheeled cart within 2 ½ feet of the lot line. The landlord testified that the cart impeded access to those who might need to access either this site or the neighbouring site in order to perform inspections or read utility meters. The landlord testified that she was not certain whether in an emergency the cart could be easily removed. The tenant testified that in the photographs it is clear that the cart is moveable.

The landlord testified that the tenant has contravened Rule #2 by completing landscaping on the site without having submitted a plan for approval. The landlord acknowledged that after the tenant started work he submitted a plan with which the landlord took no issue. The tenant testified that in 2008 when he first moved to the site he obtained approval for part of the work he planned but did not receive either approval or rejection of the second half of the work. The tenant testified that he waited a considerable time for a response and eventually completed the work under the assumption that the landlord did not object. The tenant testified that once the work had begun the landlord acknowledged that the original sketch submitted by the tenant had been lost and the landlord asked the tenant to identify the material he was using. The tenant identified the material and no issue was taken by the landlord.

The landlord submitted photographs showing that the tenant had contravened Rule #3 by parking his vehicle in an area other than the driveway at his site. The landlord testified that the tenant parked there on a number of occasions, backing up into plants. The tenant testified that the area on which he parked is covered with driveway gravel and that parking in that area poses no problem. The tenant further testified that the

photographs taken by the landlord were taken on occasions in which he purposely parked on that area in order to unload his vehicle. The tenant denied parking in the area on a regular basis.

The landlord testified that she believes the tenant stored wooden pallets outside his home which created a fire hazard. The tenant denied that the item in question, which was covered with a tarp, was a pile of pallets and argued that the landlord herself stored wood immediately outside her home. The tenant testified that the item in question was a freezer to which the landlord replied that the rules specifically prohibit storing appliances in carports.

The parties agreed that the tenant has another occupant, A.K., living with him and that she is not registered as an occupant at this site. The tenant testified that when he lived at the previous site in the park he had registered A.K. as an occupant but argued that he had not yet been asked to register her as an occupant at the current site.

Analysis

The landlord or a park committee is entitled to make rules to govern the park and may unilaterally impose those terms as long as certain conditions are met. These conditions include giving notice of the rules to the affected tenants and ensuring that the rules comply with the Manufactured Home Park Tenancy Regulations. Section 30 of the Regulations provides as follows:

30 (1) The park committee or, if there is no park committee, the landlord, may establish, change or repeal a rule if it is reasonable in the circumstances and if the rule has one of the following effects:

- (a) it promotes the convenience or safety of the tenants;
- (b) it protects and preserves the condition of the manufactured home park or the landlord's property;
- (c) it regulates access to or fairly distributes a service or facility;
- (d) it regulates pets in common areas.

(2) If there is a park committee, the rules must be established, changed or repealed according to the procedure set out in sections 22 *[park committee decisions]* and 23 *[vote by landlord and tenants]*.

(3) A rule established, or the effect of a change or repeal of a rule changed or repealed, pursuant to subsection (1) is enforceable against a tenant only if

- (a) the rule applies to all tenants in a fair manner,
- (b) the rule is clear enough that a reasonable tenant can understand how to comply with the rule,
- (c) notice of the rule is given to the tenant in accordance with section 29 *[disclosure]*, and
- (d) the rule does not change a material term of the tenancy agreement.

Addressing Rule #1, the provision in the rules is unclear. A strict reading of the term leads me to find that the tenant is restricted not from placing items within 2.5 feet of the lot line, but from placing items which would restrict reasonable access. I find that a cart on wheels does not restrict reasonable access and I dismiss the landlord's claim for an order that the tenant comply with Rule #1.

I accept the tenant's testimony that he submitted drawings to the landlord and that the landlord failed to respond in a timely manner. While it would have been prudent for the tenant to re-submit those drawings, as the landlord ultimately approved the plans I find that it is unnecessary to order the tenant to comply with Rule #2 and I dismiss that claim.

As for the landlord's claim for the tenant to comply with Rule #3, I am not satisfied that the tenant has only parked on the gravelled area on limited occasions for brief periods of time. One of the landlord's photographs shows the tenant's truck parked almost completely on the gravelled area with another vehicle parked in the driveway in such a manner as to prevent the truck from exiting. I find it unlikely that if the tenant were parked only for a short duration that he would permit another vehicle to block his exit. I find that the rule complies with the effects identified in Regulation 30(1) and I find it

appropriate to order the tenant to comply with Rule #3. However, I note that the second of the landlord's photographs which shows the tenant parked several inches outside the paved driveway demonstrates that the enforcement of the Rule can be abused. I find that parking in the manner shown by the landlord's picture B on page 26 of the evidence demonstrates substantial compliance with the Rule and would be insufficient in and of itself to demonstrate that the tenant has failed to comply with the Rule. **I order the tenant to comply with Rule #3 and restrict himself from parking vehicles on areas on the manufactured home site other than the driveway.**

I find that the landlord has failed to demonstrate that a fire hazard exists as a result of the item under the tarp outside the rental unit. Further, if the landlord herself has wood stacked outside her manufactured home, she may not enforce rules regarding storage of wood on other park residents as Regulation 30(3)(a) requires that rules be applied to all tenants in a fair manner. The landlord provided no proof that the rules prohibit storage of an appliance outside the manufactured home and I note that the word "storage" implies that the item stored is not used. The testimony indicated that the tenants use the freezer and it is possible that the rule which the landlord believes prohibits storage of an appliance outside would not apply to an appliance which is used on a regular basis. I dismiss the landlord's claim for an order that the tenant comply with this rule.

I find that the tenancy agreement clearly requires the tenant to obtain the consent of the landlord in order for A.K. to be an occupant of the site. The landlord advised that the procedure in place involves registering an occupant as was done when the tenant and A.K. lived in the previous site. **I order the tenant to comply with the tenancy agreement and register A.K. as an occupant.**

Conclusion

The tenant is ordered to comply with parking rules and to register A.K. as an occupant. I find it appropriate that the tenant bear the cost of the filing fee paid to bring this application and I grant the landlord a monetary order for \$50.00.

Dated: July 20, 2010

Dispute Resolution Officer