INTERIM DECISION

Dispute Codes:

Tenant "A": OLC, RP, PSF, RR and FF

Tenants "B": OLC, RP and FF

Introduction

These applications were brought by immediately neighbouring tenants after a Supreme Court of British Columbia decision on an action between the applicant tenants was referred to the Residential Tenancy Branch under the *Manufactured Home Park Tenancy Act.* The Branch cannot adjudicate disputes between tenants, so each of the parties has named the landlord as respondent seeking to find a resolution to this dispute.

The tenants' "B" application was originally set for hearing on November 16, 2010, but with the consent agreement of the legal counsel for the tenants and the landlord, the application was adjourned to be heard at the same time as that of tenant "A" as the matters are inextricably related.

As a matter of note, during the hearing, tenant "A" withdrew her request for a rent reduction.

Issues to be Decided

This matter requires a decision on whether both tenants are entitled to Orders against the landlord for compliance with the rental agreement or legislation and repairs, and recovery of their filing fees. In addition, the application by tenant "A" requires a decision on whether the landlord should be issued with an Order to provide service and facilities.

Background and Evidence

This dispute arose after fire destroyed tenant "A's" manufactured home of fifteen years on February 25, 2010. She subsequently ordered a new home, 14 feet wide, compared to the 12 foot-wide home lost in the fire and she obtained the necessary building permit.

The company engaged to deliver the home advised tenant "A" that some shrubs and fencing on the tenants' "B's" property would need to be removed to accommodate the delivery.

As park rules require the consent of the landlord for removal of fencing and shrubs, tenant "A" sought consent of the landlord who referred her to tenants "B" who in turn refused consent. Tenants "B" expressed objections that tenant "A" had initially encroached on their property without prior consent.

The landlord and tenants "B" proposed alternative methods for delivery such as use of a crane, delivery by splitting the unit and delivering it in two pieces, and/or lifting the unit over the neighbours obstructions all of which were ruled out by the heavy tree canopy over the property, impractical cost, or unnecessary danger.

Tenant “A” went to the Supreme Court of British Columbia seeking access to her lot, one result of which was a declaration by the court that the landlord had the right to remove the fence.

The landlord removed the shrubs in question in October 2010 on finding them overgrown but the question of the fence and a cherry tree remained unresolved. In consequence, the neighbours brought their present application seeking an order that their shrubs be replaced and that the fence remain undisturbed.

A British Columbia Supreme Court hearing on November 2, 2010 resulted in a ruling that the landlord owned the fence, and on being so advised by tenant “A”, deferred action pending the present hearing.

Counsel for tenant “A” submitted that the company engaged to do the move had 44 years experience, moved 100 homes per year, and in response to the landlord’s concerns over possible damage to common areas, she advised that the company carried $10 million in liability insurance.

She further reiterated her client’s promise to pay for the restoration of the fence by a tradesman of their choosing and gave assurance that her client had set aside $1,000 for that purpose.

Counsel for tenants “B” submitted that the disruption his clients’ property constituted trespass.

Tenants “B” submitted numerous photographs of their yard and the fencing in question and gave evidence of the sentimental value of the fence as a number of panels had been given to them as wedding gifts 10 years ago.

They also submitted or reported opinions from a number of other persons experienced in moving manufactured homes. Those opinions varied from those of the mover engaged by tenant “A” to the extent that they foresaw potential damage to the common areas of the park and, in particular, to the front yard of tenants “B” in addition to supporting the afore noted moving methods.

Analysis

On the basis of photographic evidence, I must concur that tenants “B” have done an exceptional job of beautifying their site, a doubtless benefit to the park in general and in particular to nearby neighbours.

However, I must find that, for the most part, the disruption to their work will be temporary and I accept the assurance of counsel for tenant “A” that the fence will be restored at tenant “A’s” expense.

I further find, on the balance of probabilities that the mover who is or will be contracted to do the move is the more likely to have given the most carefully considered assessment as to the feasibility of completing the move and installation successfully. While the submissions posted by tenant “B” are professional opinions, that of tenant “A” is a commitment and must be given greater weight.

Accordingly, I find that the interests of the tenant of site 147 to install a new manufactured home must take precedence of the interests of the tenants of site 146 to have their fence and yard temporarily disturbed.

Section 55(c) of the Act provides that:

> “The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement.”

By that authority, I hereby by order that the landlord grant forthwith whatever permissions and duties are reasonable and necessary to facilitate the tenant of site 147 installing her new manufactured home on here site.

As permitted by section 23(c) of the *Act* I hereby authorize and order that the landlord and personnel working for the purpose of delivery of the manufactured home may temporarily occupy as that portion of site 146 of the park necessary to facilitate the delivery of the 14-foot manufactured home to site 147 and as described the contracted mover.

I am dismissing with leave to reapply that portion of tenants’ “B’s” request for an order for restoration of their shrubs as I believe there is a strong probability that matter will be resolved cooperatively following completion of the installation of new home on site 147.

December 7, 2010