

DECISION

Dispute Codes:

MNDC, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking a Monetary Order for money owed or compensation for damage or loss under the Manufactured Home Park Tenancy Act or the tenancy agreement.

Both parties attended and gave testimony in turn.

Issue(s) to be Decided

At this hearing the issues to be determined, based on the testimony and the evidence, were:

- Is the tenant entitled to be compensated for loss or damage due to landlord's failure to comply with the Act or tenancy agreement?
- Is the tenant entitled to a retro-active rent abatement for devalued tenancy?
- Whether the tenant should be permitted to change the locks

Background and Evidence

The tenancy began on July 13, 1995, and pad rental is \$485.00 per month. The tenant testified that after her manufactured home burned down, her efforts to bring in a new mobile home were delayed by the landlord's failure to comply with the Act.

Previous hearings were held with respect to the tenant's position that she must be permitted to temporarily remove a fence on the adjoining site as necessary to bring the new home onto the site. A hearing was also held with respect to an application by the occupants of the adjacent site seeking an order to prohibit the landlord or the tenant from removing the fence and other exterior landscaping. In November 2010, an order stemming from an application by the tenant to the Supreme Court established that the landlord had the authority to have the fence and landscaping temporarily removed to accommodate the arrival of the tenant's new home and the landlord was ordered to proceed. On February 15, 2011, the tenant's unit was set on the rented pad. Now that

the tenant's home is in place, the tenant stated that she is seeking monetary compensation in damages because she was deprived of a home for almost an entire year while awaiting the landlord's intervention.

A substantial amount of evidence was submitted by both parties including written testimony, copies of communications, court transcripts and decisions, excerpts from the Act, Manufactured Home Park Tenancy Regulations and Residential Tenancy Guidelines, photographs, copies of the Park Rules and Park Regulations,

As the duration of the hearing exceeded two hours, and the witnesses of the tenant had yet to be heard, the tenant was permitted, with the landlord's consent, to submit written witness testimony after the conclusion of the participatory hearing and this testimony, if found relevant, would be considered prior to a decision being made. The landlord expressly waived its right to receive and respond to the witness testimony being sent in.

The tenant is claiming \$25,000.00 in damages against the landlord. The tenant stated that the landlord's refusal to intervene and force her neighbour to permit the temporary removal of the fence and other adjustments to make it possible for her new manufactured home to be moved onto her site, caused a delay that interfered with her quiet enjoyment of the site and cause additional expenses. The tenant testified that a portion of the claim is a 100% rent abatement for one year because she could not utilize her site, despite paying full rent for the duration.

The tenant testified that the landlord had a legal obligation under the Manufactured Home Park Tenancy Act to assist the tenant, but instead the landlord sided with her neighbour, ignoring the tenant's letters and complaints.

The tenant could not identify what section of the Act requires the landlord to force an adjacent resident to cooperate by allowing removal of the fence or any section of the Act that obligates the landlord to have this done on behalf of a resident requesting the alteration. However, according to the tenant, the landlord was required to protect the tenant's right to quiet enjoyment of her site which was being compromised by her neighbour's refusal to cooperate. The tenant testified that the landlord did possess the power and authority to have these chattels forcefully removed, as confirmed by the Court decision that found this to be the case. The tenant pointed out that the court ordered the landlord to intervene to remove the structures encumbering the arrival of the tenant's new home. The tenant testified that this should have been done sooner by the landlord without the tenant having to take legal action. The tenant testified that, at the very least, the landlord should have conducted an impartial investigation to expedite process instead of abrogating its responsibilities. The tenant acknowledged that, after the Court order was served on the landlord, the landlord finally did act to have the items blocking access removed, but this was still subject to additional unreasonable delays.

The written statements received from the tenant's witnesses supported the tenant's testimony and evidence in full.

The tenant is claiming aggravated, (non-pecuniary), damages and the total amount of the pecuniary and non-pecuniary damages being claimed is \$25,000.00.

The landlord testified that after the tenant's existing home burned down, the tenant gave an indication that she was purchasing a new home and that the mover informed her that certain property improvements on the adjacent site had to be removed temporarily to accommodate the arrival of the tenant's home. The landlord stated that there is a policy and process in place to deal with circumstances such as this, the first step of which was to have the tenant provide certain information to the landlord about the company supplying the home, the mover, details with regard to the structure including the registration, insurance and compliance with legal standards. The landlord stated that this data was requested by the landlord in writing. The landlord testified that the rules also required that a resident seeking access affecting another resident, must communicate with the other resident to make the necessary arrangements between them. The landlord testified that this method is the normal process followed and has not presented any problems in the past. The landlord testified that the discussions between the tenant and the other resident apparently quickly broke down and both parties expressed concerns to the landlord about violations of their rights. The landlord testified that the tenant had also failed to provide the information initially requested by the landlord that would permit them to proceed in any way.

The landlord acknowledged that there was a delay, but pointed out that this delay was not due to any violation of the Act by the landlord. The landlord testified that they have always supported the tenant's intentions to have the new home located in the park, but this process involved a collaborative effort with cooperation from the tenant, her mover and builder/supplier, as well as being provided with critical documentation that could only be obtained and submitted by the tenant. The landlord testified that breakdowns in communication, missing data, changes in plans and squabbling interrupted and prolonged the process for all concerned.

The landlord testified that that there were also many changes in the bylaws and legal requirements since the last time the tenant brought in a manufactured home and all of the criteria had to be fully met prior to proceeding to the next step or making changes. The landlord testified that the tenant was not satisfied with their explanations and discounted the fact that there were mandatory rules that the park owners were required to follow and evidently blamed the landlord for the problems that arose.

The landlord stated that although the tenant's frustration and impatience was understandable given that she was without a home, the fact is that some of the delay was due to the tenant herself.

The landlord testified that, during the period that the tenant was arranging for the new home, there were also significant disruptions in the Park caused by the tenant's activities and her efforts to prepare for the arrival and installation of her manufactured home. The landlord testified that this generated complaints from other residents. The landlord testified that the goal of both the landlord and the tenant was the same. Both hoped to have the project completed as soon as possible.

The landlord testified that the tenant chose to take her concerns to dispute resolution and eventually to litigation through the court. The landlord's position is that, once all of the tenant's data was provided and she had completed the prerequisite preparation, approvals and documentation, the landlord was then finally able to have the neighbour's structures removed within a tight deadline to have them replaced as quickly as possible. The landlord testified that they had the structures restored mostly at their own expense as there were unforeseen adjustments and landscape issues and the tenant's financial contribution towards the work did not come close to covering the actual cost. The landlord pointed out that they have accommodated the tenant in every way possible and fulfilled their duty to assist without circumventing the legal requirements, while at the same time, trying not to unduly impose on the rights of other residents in the park.

. Analysis

In regard to the monetary claim for a rental abatement, I find that section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for any damage or loss that results. Section 60 of the Act grants a Dispute Resolution Officer authority to determine the amount and order payment under the circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent *in violation of the Act, agreement or an order*
3. Verification of the amount to compensate for the loss or to rectify the damage.

4. Proof that the claimant took reasonable steps to minimize the loss or damage

In this instance, the burden of proof is on the tenant; to prove the existence of the damage/loss stemming directly from a contravention of the Act or agreement.

With respect to whether there was a violation of the *Act* by the landlord, I find that the tenant was not able to identify any section of the Act being violated, but stated the landlord failed to ensure that others did not impede on her right to quiet enjoyment guaranteed by the Act. Specifically, the tenant alleged that there was a requirement under the Act that the landlord intervene to persuade the neighbours that they were not entitled to prevent the tenant from removing their fixtures for the purpose of moving her new home onto the pad/site.

I find that the portion of the Act likely being referred to by the tenant is section 22 which provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the manufactured home site subject only to the landlord's right to enter the manufactured home site in accordance with section 23 [*landlord's right to enter manufactured home site restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

However, I find that the right to quiet enjoyment does not grant one tenant a right to impede on another's site at will. In fact, I find that this section more likely functions to protect another tenant from such intrusions.

I find that there is no specific statutory responsibility under the Act requiring that the landlord assist a tenant in temporarily altering the site of a neighbouring resident in the park for the purpose of moving a new home onto her own site.

While I accept the tenant's assertion that the landlord was in charge of and ultimately responsible for the land, I find that this legal authority actually requires the landlord to balance the rights and privileges of all tenants, which would include the applicant's interests as well as that of her fellow residents in the park.

In this instance, the park had implemented Park Rules and Park Regulations with a detailed protocol to follow with respect to issues such as this. In addition the landlord

had various legal requirements that they had to ensure were met prior to allowing any changes to be made. I find that the landlord had dutifully followed its own procedure. I find that this procedure had apparently been seen as fair and effective for decades, until this particular matter arose, in which the usual rules and procedures in place proved not to be effective.

I find that the two parties ultimately responsible for the failure of the existing protocol, and the necessity of obtaining an order from the Supreme Court, were the tenant and her neighbouring resident who both felt that their rights were being gratuitously impeded upon by the other. I find that the landlord was willing in good faith to find a solution that was mutually satisfactory to both of these parties, and complied with the Park Rules, the Park Regulations and the Act. However as the discussions between the two neighbours polarized them and developed into an adversarial dispute with lawyers on both sides, I find that the landlord had no choice but to await the outcome of the Dispute Resolution process and the Supreme Court's ruling, which culminated in December 2010.

I find that although the tenant was clearly subjected to a substantial delay entailing significant hardship both physically, and emotionally and did suffer a significant loss, this turn of events was not caused by any violation of the Manufactured Home Park Tenancy Act on the part of the landlord.

In addition to enforcing the provisions of the Act, a dispute resolution officer also has the authority to make a determination under the tenancy agreement. Section 6 of the Act states:

- (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant **under a tenancy agreement.**
- (2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 51 (1) [*determining disputes*]. (my emphasis)

The tenant did not identify what part of the tenancy agreement had been violated by the landlord, if any. On the question of whether or not the landlord was in violation of the *tenancy agreement*, I find that the Park rules and Regulations set out the process and requirements in relation to site improvements, how to proceed with respect to projects that affect the property of neighbouring residents and the mandatory requirements for moving a home onto a site in the park. In this regard, as stated previously in this decision, I find that the landlord attempted to follow the Park Rules and Regulations

and made every effort to remain in strict compliance with these. I find that there was no violation by the landlord of any term in the tenancy agreement made between the tenant and the landlord.

I find that there are some situations, either not anticipated by the rules or too complex to be defined in a general way so that parties are given a clear protocol to follow. I find that when this conflict arose and persisted without resolve, the tenant naturally availed herself of any practical avenue for a resolution and eventually succeeded through the courts. It appears that this was the best, if not the only, option to resolve the impasse.

Given that the landlord did not violate the Act or the agreement, I find that the tenant's claim for damages has failed to meet element two of the test for damages detailed above. Accordingly, I find that the tenant's application must be dismissed.

Conclusion

Based on the testimony and evidence, I find that the tenant's application failed to meet all elements in the test for damages. Accordingly, I hereby dismiss the tenant's application in its entirety without leave to reapply

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 20, 2011.

Residential Tenancy Branch