



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TIMBERLAND PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNDC

Introduction

This hearing dealt with the tenant's request for an order to force the landlord to comply with previous orders and monetary compensation for aggravation and disruption under the Act, regulations or tenancy agreement.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

1. Is the tenant entitled to an order to force the landlord to comply with the previous orders issued?
2. Is the tenant entitled to monetary compensation from the landlord for aggravation and disruption.

Background and Evidence

The tenant has been occupying the subject manufactured home site since December 2003 and the pad rent is \$387.00. The tenant's site apparently has large trees that the tenant feels are a danger.

Previous Hearing

The tenant and the landlord were involved in a previous hearing held on April 9, 2013 in which the tenant was seeking an order to force the landlord to remove the trees or an order to force the landlord to have the trees assessed by two different certified arborists. The tenant had also asked for monetary compensation for losses and costs in the

amount of \$1,045.28. The arbitrator at the previous hearing granted the tenant's request for an order that the landlord have the trees assessed and dismissed the tenant's request for an order to remove the trees and the monetary claim.

The tenant testified that the landlord has failed to comply with the order issued by the previous arbitrator on April 12, 2013.

The landlord testified that they did comply with the order and, in fact, exceeded the expectation with regard to protecting the tenant from hazards from the trees.

The landlord testified that they contracted with more than one company and the two arborist reports were provided to the tenant. The landlord pointed out that, regardless of any action taken by the landlord to examine, assess and trim the trees and regardless of what their arborist report indicates, the tenant still persists in complaining and promoting her opinion that the trees should be condemned and removed.

The tenant pointed out that the landlord had received other reports that were not released to the tenant that do support the tenant's position. The tenant agreed that she still believes that the trees must be removed and stated that the landlord should release all of the reports from every arborist that has assessed the trees.

The tenant testified that the landlord has sent crews to deal with the trees on her pad site without notifying the tenant that there would be trades persons in her yard and the tenant feels that this has been disruptive and against the rules of common courtesy and the rules of the park. The tenant is seeking compensation in the amount of \$1,000.00 for this aggravation.

The landlord testified that the tree experts and their crews were on site in compliance with the orders from the previous hearing. The landlord pointed out that the tenant herself had insisted that they deal with the trees and take extra steps to ensure that there was not a safety issue and this could not be done without accessing the property. The landlord testified that the presence of the crews was not a surprise and the tenant should have expected that action would be taken about her concerns within the specific deadline ordered by the arbitrator at the tenant's request in the previous hearing.

Moreover, according to the landlord, the tenant had presented her concerns as a safety issue that needed to be handled without delay. The landlord testified that any safety situation presented as an emergency requires immediate access to the site, and the Act provides for that.

*the landlord disagreed that they have violated the Act and also objected to the tenant's monetary claim of \$1,000.00 for "aggravation".

Analysis

Order to Comply

I find that, on April 12, 2013, the previous arbitrator ordered that, within one month of the decision, the landlord must:

1. Have a certified arborist inspect both of the subject trees and prepare a written report that includes an assessment of:
 - The overall health of the trees;
 - Whether any limbs or portions of the trees are at increased risk of falling off the tree;
 - The impact of the ivy growth on the trees currently and in the future if the ivy is left in place;
 - Whether the trees are too close to the manufactured home pursuant to any applicable laws governing such matters.
2. Give a copy of the arborist's written report to the tenant.
3. Follow any and all recommendations of the certified arborist and comply with any laws governing the proximity of the trees and the manufactured home.

The arbitrator also stated that, as an alternative to the above orders, the landlord is at liberty to remove the subject trees if within the landlord's legal right to do so.

Based on the evidence before me, I find that the landlord has fully complied with the above order. Accordingly, the portion of the tenant's application seeking an order to force the landlord to comply with the previous order is dismissed.

In addition, I find that the tenant's renewed request for an order to remove the trees was a matter already dealt with in the previous hearing.

An arbitrator has no authority to reconsider any previous findings or a decision already rendered by another arbitrator, who heard and determined the same matter. The only avenue to challenge the outcome of a previous dispute resolution hearing would be through a judicial review by the Supreme Court of British Columbia.

Accordingly, the portion of the tenant's application seeking an order to force the landlord to remove the trees must be dismissed as this matter has already been heard and determined, and I therefore lack statutory authority to proceed.

Monetary Compensation

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

An Applicant's right to claim damages from another party is dealt with under section 7 of the Manufactured Home Park Tenancy Act, which states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 60 of the Act grants an Arbitrator the authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the claim 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 or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, I find that the tenant is required to prove the existence and value of the damage or loss stemming directly from a violation of the agreement or a contravention of the Act by the landlord. (My emphasis)

I find that section 22 of the Manufactured Home Park Tenancy Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; 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*];

and use of common areas for reasonable and lawful purposes, free from significant interference.

I find that section 23 of the Manufactured Home Park Tenancy Act states that a landlord must not enter a manufactured home site that is subject to a tenancy agreement for any purpose unless the tenant gives permission at the time of the entry or not more than 30 days before the entry or at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

This section of the Act also provides that a landlord can enter the premises if:

- the landlord has an order authorizing the entry;
- the tenant has abandoned the site;
- an emergency exists and the entry is necessary to protect life or property; or
- the entry is for the purpose of collecting rent or giving or serving a document that under this Act must be given or served.

I find that the landlord had entered the property without giving the tenant written notice pursuant to section 23 of the Act.

However, I find that the tenant likely should have expected some prompt activity on the site during April 2013 and the first half of May 2013, because of the tenant's success in obtaining an order with a deadline to compel the landlord's immediate intervention. I find as a fact that this tenant had presented an urgent need for the landlord to take action regarding the trees. In fact, in her previous Dispute Resolution application, actually sought "*emergency repairs*" and presented this as an urgent matter.

Given the above, I do not find that the landlord's failure to provide written notice before entering the premises, during the one-month period in question, to be a violation of the Act. That being said, I find that, in future, the landlord should endeavour to comply with section 23 of the Act before entering the site.

Based upon the above, I hereby dismiss the tenant's monetary claim against the landlord.

Conclusion

The tenant is not successful in the application and the tenant's request for orders to cut down the trees and the tenant's monetary claim are dismissed.

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

Dated: June 17, 2013

Residential Tenancy Branch