



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNLC, FF

### **Introduction**

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Landlord by mailing by registered mail to where the landlord carries on business.

The claim in the Application for Dispute Resolution seeks an order to cancel a Notice to End Tenancy. The Landlord has not served a Notice to End Tenancy this is not an appropriate claim. However, the parties wanted me to consider whether there should be an order that the landlord comply with the Act, Regulation or tenancy agreement. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided**

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order requiring the landlord to void his requirement that the Park be restricted to those over 55 years of age?

- b. Whether the tenant has failed to comply with the Park Rules by having a car cover over his vehicle?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

**Background and Evidence:**

The tenancy began on January 6, 2006. The present rent is \$570 per month payable on the first day of each month. The tenancy agreement provided that certain portions of the park were reserved for families and other portion of the park was reserved for adults. The tenants in the adult section shall not have residents 19 years or younger. The agreement also provided that "The Landlord shall from time to time have the right to make rules and regulations and/or amend same, which in the Landlord's judgment, may be desirable for the safety, care and cleanliness of the premises and the residential property and for the preservation of good order among t the occupants of the residential property."

On May 25, 2011 the landlord served a new set of Rules and Regulations. Of importance for the purposes of this hearing are the following provisions:

**A – HOME SALES**

- 1. Georgian park is 55+ Mobile Home Park. All homes in Georgian Park are owner occupied at all times and renting of homes is not allowed. A person 55 years of age or older must be on the title to the home and living in the home at all times.

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**L – RV PARKING**

- 1. Tenant's sites or driveways are not to be used as parking areas for campers, boats, motor homes, trailers or 5<sup>th</sup> wheel unless the tenant has WRITTEN CONSENT from park management.
- 2. ...
- 3. Tarps covering RVs, vehicles etc. ARE NOT ALLOWED under any circumstances.

On May 21, 2013 the tenant received a Notice from the Landlord requiring him to remove all tarps. While the wording is unclear it was the landlord's intention that if the tenant failed to remove the tarp the landlord would issue an eviction notice.

The tenant objects to the Notice. He also objects to the change in designation of the park to a 55+ park. He testified he was never notified and never agreed to such a change in the Park. The tenant testified he intends to sell his manufactured home in the near future and he is concerned about whether this will reduce the number of prospective purchasers. Neither party presented any evidence as to whether this is a real risk or whether it is speculation. The representative of the landlord testified there has been 15 sales in the last month.

There is no park committee at this park.

## **Analysis**

Section 31 to 33 of the Manufactured Home Park Tenancy Act provides as follows:

### **Part 3 ♦ Manufactured Home Parks**

#### **Establishment of park committee**

31 In accordance with the regulations, the landlord and tenants of a manufactured home park may establish and select the members of a park committee.

#### **Park rules**

32 (1) In accordance with the regulations, a park committee, or, if there is no park committee, the landlord may establish, change or repeal rules for governing the operation of the manufactured home park.

(2) Rules referred to in subsection (1) must not be inconsistent with this Act or the regulations or any other enactment that applies to a manufactured home park.

(3) Rules established in accordance with this section apply in the manufactured home park of the park committee or landlord, as applicable.

(4) If a park rule established under this section is inconsistent or conflicts with a term in a tenancy agreement that was entered into before the rule was established, the park rule prevails to the extent of the inconsistency or conflict.

#### Park committee role in dispute resolution

33 Subject to the regulations, the park committee for a manufactured home park may assist the landlord and a tenant of the park to reach a voluntary resolution of a dispute between them.

Section 13 to 31 of the Manufactured Home Park Tenancy Act Regulations deal with Park Committees. It provides that to establish a Park Committee the landlord or a Tenant must call a meeting of the Tenants and Landlord. Section 30 provides

#### Making rules

- 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.

### **Determination and Orders**

After carefully considering all of the evidence I determined that in the circumstances of this case the landlord has the legal right to change the Park Rules including changing the Park to a 55+ park. The Rules do not amount to a material change of the tenancy agreement to the tenant as they affect only those who are new to the park. The tenant alleged that it would affect his ability to sell his unit. However, he failed to present any evidence to support this allegation. The original tenancy agreement signed by the tenant gave the landlord the right "to make rules and regulations and/or amend same, which in the Landlord's judgment, may be desirable for the safety, care and cleanliness of the premises and the residential property and for the preservation of good order among t the occupants of the residential property". There is no Park Committee. The Manufactured Home Park Tenancy Act and Regulations contemplate a situation where there is no Park Committee and those provisions give the landlord the right to make changes to the Rules and Regulations subject to certain restrictions. There is no evidence the Rules and Regulations dated May 25, 2011 are inconsistent with the Act and Regulations. As a result I dismissed the tenant's application that the Rules and Regulations changing the Park to a 55+ park be cancelled.

The tenant also sought an order that the landlord comply with the Act, Regulations and tenancy agreement. The landlord has given him Notice that if he does not remove his car cover he will be given an eviction notice. After carefully considering the submission of both parties I determined the landlord failed to establish that the tenant has breached the May 25, 2011 Rules and Regulations. The Rules were prepared by the landlord. I do not accept the submission of the landlord that a car cover is a tarp. Further, the provisions relating to the prohibition of tarps is in the RV section where numerous types of recreational vehicles are identified. I determined the use of the word "vehicle" in the provision "3. Tarps covering RVs, vehicles etc. ARE NOT ALLOWED under any circumstances" refers to the number of vehicles referred to in paragraph 1 of the same section. It does not refer to a car.

As a result I determined the tenant has not breached the May 25, 2011 Rules and Regulations relating to tarps.

The tenant seeks reimbursement of the \$50 filing fee. The tenant has been partially successful. I ordered that the landlord pay to the tenant the sum of \$25 being one half of the cost of the filing fee such sum may be deducted from future rent.

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 19, 2013

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Residential Tenancy Branch