



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 608759 BC LTD
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

DRI, MNDC, OLC, LRE, FF, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to dispute an additional rent increase. The tenant is seeking monetary compensation for loss of value to the tenancy by terminating cable services that were previously included in the rent, and reducing the area of the tenant's yard. The tenant is also seeking an order to force the landlord to comply with the Act and an order to suspend or restrict the landlord's access to the property.

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

Is the tenant entitled to monetary compensation under section 60 of the Act for damages or loss in the form of a retro-active and continuing rent abatement?

Should the landlord be ordered to comply with the Act?

Is an order restricting the landlord's access to the property warranted?

Background and Evidence

The tenancy began in September 2008 and the pad rent is \$454.08. The tenant testified that, until 7 months ago, the pad rent included the provision of cable services without extra charge. The tenant testified that the landlord sent out a notice discontinuing the cable service as part of the rent. The tenant testified that the landlord

did not reduce the pad rent to reflect the loss of value and the tenant has since been paying \$86.90 per month for equivalent cable service as that eliminated by the landlord. The tenant is seeking a retro-active and continuing abatement of rent in the amount of \$86.90.

The landlord pointed out that there was no written tenancy agreement with the tenant. According to the landlord, they also had never entered into a verbal agreement with the tenant, as the tenancy was in existence when this landlord purchased the park. The landlord testified that they attempted to have the tenants sign a written agreement, but this was not successful.

The landlord acknowledged that the provision of cable services had been in place but was eliminated after properly notifying the tenants. The landlord acknowledged that the tenant's rent of \$454.08 was never reduced to compensate the tenant for the loss of value of the cable services.

The landlord testified that they were not aware that the Act requires a landlord to compensate tenants for terminating services, such as T.V. cable, previously included in the tenancy rate.

The landlord argued that the cost of cable was valued at less than the amount being claimed by the tenant because the basic rate for cable is around \$30.00 and the approximate per-household rate previously paid by the landlord to provide a more enhanced service was just over \$40.00.

The tenant pointed out that the landlord's cost for the cable was lower as it was based on a group rate. The tenant pointed out that the actual cost to restore the same service, on an individual basis, is \$86.90 as confirmed by their invoices. The tenant feels entitled to be reimbursed for the cable invoices to date and be granted a rent abatement of \$86.90 each month going forward.

With respect to the tenant's claim for loss of a portion of the yard due to a construction project that has since been completed on an adjacent property, the tenant testified that the fence constructed by the contractors was unsafe and now blocked part of the yard that they had previously been able to use. The tenant feels that the reduction in the area and the inconvenience imposed by this fence warrants a rent abatement.

The landlords testified that, although they are also co-owners of the business situated on the adjacent property, the construction project in that location was not part of the Manufactured Home Park and is not connected with this tenancy agreement. The landlord pointed out that the fence around the project was a necessity for legal and safety reasons due to construction and a change in the level of the land. According to

the landlord, the temporary construction fencing was merely left in place pending rezoning of the lot and this was approved by the municipality.

Analysis - Monetary Compensation

The tenant is requesting a rent abatement for the reduction of value of the tenancy based on noncompliant removal of free cable services by the landlord.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 60, the Applicant has a burden of proof to establish that the other party did not comply with the agreement or Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7. The evidence 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.
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, the burden of proof is on the tenant to prove a violation of the Act and a corresponding loss.

I find that the landlord and tenant had originally contracted for a tenancy that included provision of cable services at no additional cost to the tenant beyond the rent. I find that the landlord terminated this service.

Section 21 (1) of the Manufactured Home Park Tenancy Act states that a landlord must not terminate or restrict a service or facility if (a) the service or facility is essential to the tenant's use of the manufactured home site as a site for a manufactured home, or if (b) providing the service or facility is a material term of the tenancy agreement.

However, section 21 (2) of the Act does permit a landlord to terminate or restrict a service or facility, other than one referred to in subsection (1), under the following circumstances:

(a) the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. (my emphasis)

I find that the landlord did reduce the cable service in a manner that was not compliant with the Act or agreement because the landlord failed to reduce the rental rate by the amount of value lost.

Accordingly, I find that the tenant is entitled to be compensated for past losses of \$86.90 per month for 7 months up to and including January 2014 for a total compensation of \$608.30.

I find that the rental rate for the Manufactured Home Park site must be reduced from \$454.08 to \$367.18 per month commencing February 1, 2014.

In regard to the dispute respecting the tenant's monetary claim for loss of a portion of their yard and requests for other orders with respect to issues related to the neighbouring property, I find that there is insufficient information to determine the nature of the dispute in relation to the tenancy agreement between the landlord and tenant.

I find that the tenant is alleging that the lot line has been compromised, affecting the size and use of their outdoor space. However, even if I fully accept this testimony, it is not clear whether the fence impeding the tenant's use of the yard was placed there and must remain due to mandatory construction codes and municipal bylaws or whether it could be taken down or moved.

Moreover, the tenant's quarrel about the loss of their yard appears to be with the adjacent property owners. The fact that the tenant's landlord is also co-owner of the next door property being developed, does not necessarily make this disagreement over the tenant's external space a tenancy matter that would fall under the jurisdiction of the Act.

Section 55 4) of the Act states that an arbitrator may dismiss all or part of an application for dispute resolution if

(a) there are no reasonable grounds for the application or part,

(b) the application or part does not disclose a dispute that may be determined under this Part, or

(c) the application or part is frivolous or an abuse of the dispute resolution process. (My emphasis)

Accordingly, I decline to hear this portion of the tenant's claim as I find that there is not sufficient information in evidence from either party about how this particular issue relates to the tenancy contract. I therefore find that this portion of the tenant's application must be dismissed with leave to reapply.

Based on the evidence, I hereby order that the monthly rental rate for the Manufactured Home Park site will be reduced from \$454.08 to \$367.18 per month, commencing February 1, 2013 and does not include the provision of cable services.

Based on the evidence before me, I hereby grant the tenant a retroactive rent abatement totaling \$658.30 comprised of \$608.30 representing \$86.90 per month for 7 months and the \$50 cost of the application.

I order the tenant to deduct \$367.18 from the \$367.18 rent owed for the month of February 2014, leaving no further rent owed for February. I further order the tenant to deduct \$291.12 from rent that will be owed for March 2014, leaving \$76.06 remaining to be paid to the landlord for the month of March 2014.

The remainder of the tenant's application is dismissed with leave to reapply.

Conclusion

The tenant is partly successful in the application and is granted a retro-active and continuing rent abatement for the loss of cable services as part of the rent. The portion of the tenant's application seeking compensation for loss of part of the yard and request for other orders to force the landlord to comply with the Act, is dismissed with 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 *Manufactured Home Park Tenancy Act*.

Dated: January 16, 2014

Residential Tenancy Branch

