



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SPECTACLE LAKE HOME PARK
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order which allows the landlord to enter upon the rental site and to recover the cost of the filing fee from the tenants.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

During the hearing the tenants' agent stated that he is missing several documents as the landlord's presently their documentary evidence, such as L14 (a) a letter dated December 14, 2013 and L14 (b) a Notice to Enter Site. However, upon my review of the documentary evidence those documents were also filed as evidence by the tenants, at R22 and R23. Therefore, I have considered all evidence submitted by the parties.

However, only the evidence **relevant** to the issues and findings in this matter are described in this decision.

Issues to be Decided

Should the landlord be granted an order to allow entry upon the rental site?
Is the landlord entitled to recover the cost of the filing fee from the tenants?

Background and Evidence

The landlord's agent testified that the tenants filed an application for dispute resolution on October 17, 2013, seeking repairs. Their original application was dismissed with leave to reapply and their current application for repairs is outstanding.

Filed in evidence is a copy of the application filed on October 17, 2013, which in part reads,

“The driveway on my leased lot has deteriorated and is a significant tripping hazard and therefore a risk to the health and safety of myself and my guests... site drainage needs of the Park are being neglected or omitted...

The oversight/shortcoming on the part of my landlord, has increasingly adversely impacted my use and enjoyment of my leased lot and our safety & health...

The site drainage is non-existent and poses problems of water pooling throughout the lot. ...

...pooling water on or near the septic system leeching bed (soil saturation) poses a risk of ‘brown water back up into the home’s drains’...

The trees on my lot are overgrown and some are exceeding large — forestry management pruning and cuffing requirement exists...”

[Reproduced as written]

The landlord’s agent testified that since October 2013, she has attempted to gain access to the rental site and on each occasion the tenants have refused her access and because of this action, she has not been able to move forward in addressing any of the tenants’ concerns in their application.

The landlord’s agent testified that on November 16, 2013, they served the tenants with written notice of a site inspection, for an inspection to occur on November 17, 2013. The landlord’s agent stated when she attended the site the female tenant did not know the specific concerns and wanted her partner to be present. The landlord’s agents stated that GW was on the site shouting and blocking her access.

The landlord’s agent testified that the tenants were again served notice of a site inspection, for an inspection on November 23 - 24, 2013. However, they received a letter dated November 22, 2013, from the tenants which acknowledged that they received the notice on November 21, 2013, and the letter indicated they were denying access. Filed in evidence is a copy of the notice for site inspection.

Filed in the landlord's evidence is a copy of the tenants' response, dated November 22, 2013, which in part reads,

"... I feel compelled to advise you that this recent act is a grossly inappropriate and a negative approach to building a cooperative relationship. In that:

- a) the Nov. 17, 2013 request inspection of 2 of the to be inspected lots were not conducted due to the failure of your inspection team to attend upon the sites

....

...

- d) the time periods included in this notices (between 8:00am and 5:00pm over 2 days, including a day generally set aside for religious/family purpose – are an unreasonable expectation of a commitment of our time;

I am compelled to advise you that your request (Notice of Site Inspections received by the lead joint applicants) is unreasonable and a serious affront to our 'expectations of peaceful, quiet enjoyment of our leased lots'...

You are therefore advised that your "Notice(s) of Site inspection" is not acceptable any your inspection team will not be provided welcome access to lots..."

[Reproduced as written]

The landlord's agent testified that on November 23, 2013, they received a further letter from the tenant or their agent, which in part reads,

"the next attempt or any access on our leased lots **without an "order from the Director"** will be answered with criminal complaint of trespass and harassment."

[Reproduced as written]
[My emphasis added]

The landlord's agent testified on December 9, 2013, the tenants were served again with a notice of site inspection, for an inspection on December 14-16, 2013, and when they attended the site on December 14, 2013, the tenants' agent was threatening and he called the police alleging a criminal trespass, as a result, they did not access the site and waited for the police, however, they did not attend until the next day.

The landlord's agent testified on December 14, 2013, she sent again another notice for site inspection by registered mail which was received by the tenants on December 17, 2013, which included a warning letter that if they failed to allow access for the site inspection on December 21 - 22, that they may take further legal action which may include ending the tenancy. Filed in evidence is a copy of the notice of site inspection and a copy of the warning letter dated December 14, 2013.

The landlord's agent testified that when they attended the site with an engineer, two arborists and with two police officers, access was denied by the tenants' agent. However, the RCMP decided that they wanted to talk to the tenants directly and knocked on their door; however, the tenants were not at home and she was advised by the RCMP not to conduct the site inspection.

Tenants' response

The tenants' agent stated that on November 17, 2013, the landlord attended the site for the inspection, and she was informed that he was acting as agent for the tenants, and this was confirmed with the female tenant. The tenants' agent stated he was prepared to conduct the site inspection with the landlord as he was aware of the tenants' concerns. The tenants' agent stated the landlord's agent refused to accept his position as "agent" and passed by him, insisting that she was only going to talk to the male tenant and because of her actions the site inspection was not done.

The tenants' agent testified that notice for site inspection on November 23-24, 2013, was received by the tenants on November 21, 2013. The tenants' agent stated that he responded by letter on November 22, 2013, in which the landlord was denied access because it was so close to their upcoming hearing and all their preparations could not be stopped as they were fully occupied and it was an unreasonable expectation of their time. The tenants' agent did not deny sending a further letter dated November 23, 2013.

The tenants' agent testified that they contest that the tenants were served with the notice of site inspection personally, for the site inspection that was to occur on December 14, 2013, as the tenant did not acknowledge receipt by signing the proof of service documents. The tenants' agent stated the tenants were not there because the landlord did not show good faith on November 17, 2013, and access was denied and the RCMP were called to file complaint of trespass, by the landlord.

Filed in the tenants' documentary evidence is a document title "Problems with 'Site Inspection Notices...." in a table form.

In the document the tenants indicated the following:

- They received proper notice of a site inspection for November 23-24, 2013, that a clear reason for the inspection was stated and access was not granted by the tenants. The landlord was advised to seek order and order of the director;

- They received proper notice for site inspection for December 14-16, 2013, that a clear reason for the inspection was stated and access was not granted by the tenants. The landlord was advised to seek order and order of the director and a complaint of trespass was filed against the landlord for attempting to access the site;
- They received proper notice for site inspection for December 21-22, 2013, that a clear reason for the inspection was stated, and access was not granted by the tenants. The landlord was advised to seek an order of the director.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the tenants have breached the *Manufactured Home Park Tenancy Act (the Act)*, by interfering with the landlord's lawful right or interests in the rental site.

In this case, the tenants filed for dispute resolution on October 17, 2013, and their application listed several items in their details of dispute that they wanted the landlord to address. The landlord provided the tenants with four notices for site inspections.

Where a notice to enter the site is given that meets the time and other requirements set out in the *Act*, but entry is not for a "reasonable purpose", the tenants may deny the landlord access.

In this case, the tenants' documentary evidence confirms that on November 23-24, December 14-16, and December 21-22, 2013, that access was not granted to the landlord. Although they acknowledged that they were provided sufficient notice and a clear reason for the inspection was provided. I find the landlord was there for a "reasonable purpose", which was to address the tenants' concerns as set out in their application for dispute resolution seeking repairs.

I find the tenants had no lawful right to deny the landlord access to the rental site on any of those dates. The landlord is the owner of the property and has the legal right to conduct their business as they see appropriate, and that includes investigating and inspecting any complaints. The landlord also has the right to hire any experts or any other trades person that they feel are appropriate to assess the situations, such as in this case, an engineer and arborists.

The tenants have a legal obligation not to interfere with the landlord's lawful rights, to repair and maintain the property, especially when they have made an application to have repairs completed and those repairs are for their own benefit.

As I have found the tenants have breached the *Act*, by denying access of the rental site and the tenants have also indicated in their documentary evidence "Problems with 'Site Inspection Notices'", that they advised the landlord to apply for an order of the Director

to allow entry upon the rental site, I find the landlord is entitled to an order of the director authorizing the entry, pursuant to section 23(c) of the *Act*.

Therefore, I Order that the landlord is authorized to enter onto the rental site, without notice to the tenants, between the hours of 8:30am to 6:30pm, Monday through Saturday to address the following concerns: site drainage, septic system, tree service and driveway hazards.

This order is effective immediately and will remain in effect until August 31, 2014, during this time the landlord is to complete any inspections and assessments that may be required and complete any work that they find appropriate. Should the scope of the work be determined to be far greater than expected and this time period is not sufficient, then the landlord may apply for an extension of this order.

The landlord is further authorized to take any photographic or video documentation or acquire any other data that may be required of existing conditions during the site inspections and of any repairs that are made to the site.

Although this is not required by my order, the landlord may, as a courtesy, provide the tenants with notice of the site inspections/repairs, to ensure any pets are secured or if any other special requirements are required by the tenants.

Should the landlord seek access to the site for any other “reasonable purpose”, other than stated above, the landlord is required to provide the tenants with notice as required by the *Act*.

The tenants are ordered that they are not to obstruct or interfere with any of the site inspections or repairs that may be completed.

The tenants are cautioned that interfering with the landlord’s lawful right or interest in the property may be grounds to end the tenancy for cause under section 40 of the *Act*.

The tenants are cautioned that should the landlord suffer losses, as a result of a violation of the *Act*, due to their actions or neglect, the landlord may be entitled to seek monetary compensation for those losses.

I note this decision may be used at any future hearing as evidence of the tenants having been cautioned.

The landlord is granted a monetary order in the amount of **\$50.00** to recover the cost of the filing fee from the tenants. Should the tenants fail to pay this amount to the landlord, this order may be enforced in the Provincial Court (Small Claims).

Conclusion

The landlord is granted an order pursuant to section 23(c) of the *Act*, authorizing access to the rental site.

The landlord is granted a monetary order to recover the cost of the filing fee from the tenants.

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: March 21, 2014

Residential Tenancy Branch

