



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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 tenant.

Both parties appeared, gave 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.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. 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 tenant?

Background and Evidence

The landlord's agent testified that the tenant 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, which the summary in part reads,

“In summary, the tree points I am concerned about are,

1. The landlord provided driveway on lot [number removed] does not confirm to BC Building Codes...
2. The landlord provided roadways have no sufficient surface and storm water drainage management. The run-off enters my lot and causes damage to my property...
3. Forestry management issues are causing damage to my track and impose a health and safety risk on me, my family and all other tenants ...”

[Reproduced as written]

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

The landlord’s agent testified that on November 16, 2013, they served the tenant with written notice of a site inspection, in person, which the inspection was to occur on November 17, 2013. However, when they attended the site the tenant had posted a notice denying access.

Filed in evidence is a photograph of the notice, which in part reads,

“...I do not give permission for the landlord or his/her agents to enter this property without appropriate notice.”

[Reproduced as written]

The landlord’s agent testified on November 22, 2013, the tenant was again served notice of a site inspection, for an inspection on November 23 - 24, 2014. However, they received a response by letter, from the tenant 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 tenant's 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 on December 09, 2013, the tenant was served again with a notice of site inspection, for an inspection on December 14 - 16, 2013, which the tenant acknowledged receiving the notice in a letter dated December 11, 2013, and yet again denied access.

Filed in evidence the landlord's evidence is a copy of the tenant's letter December 11, 2013, which in part reads,

"Correspondence received December 9, 2013. Re: "Notice to Entire Site" dated Dec. 9, 2013, again I refer you to section 87 – as we consider this another instance of an infraction under the Act...

I also provided you with the following section of the Act, and caution your firm **to seek a Director's order to grant access to our lease lots...**

[My emphasis added]

To make it very clear: **entrance into our site stays DENIED** under all circumstances....”

[Reproduced as written]

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 tenant on December 17, 2013, which included a warning letter that if they failed to allow access with the site inspection on December 21 - 22, that they may take further legal action which may include ending the tenancy. Filed in the landlord’s evidence is a copy of that notice of site inspection. Filed in evidence is a copy of the warning letter dated December 14, 2013.

The landlord’s agent testified they received another letter from the tenant dated December 18, 2013, denying access.

Filed in evidence the landlord’s evidence is a copy of the tenant’s letter December 18, 2013, which in part reads,

“Correspondence received December 17, 2013. Re: “Notice to Entire Site” dated Dec. 9 2013, again I refer you to section 87 – as we consider this another instance of an infraction under the Act. I have to repeat myself and state the following again...

....If your firm is so intent on visiting ours sites, when we have already supplied an abundance of evidence concerning the issues in dispute, **please apply for an Order from the Director granting you access.**

[My emphasis added]

To make it very clear: **entrance into our site stays DENIED** under all circumstances....”

[Reproduced as written]

The landlord’s agent testified that they attend the rental site on December 21, 2013, with an engineer, two arborists and with two police officers and the tenant told them that they are denying access.

Tenant’s response

The tenant testified that on November 16, 2013, he was not personally served with the notice of site inspection as it was posted on his door at approximately 2:30 pm. The

tenant stated the notice was not in compliance as when a document is posted to the door it is not deemed served until 3 days later and therefore, the earliest the site inspection that could have been completed was November 20, 2013. The tenant acknowledged receiving the notice on November 16, 2013, although the tenant's testimony conflicted to the actual time it was received.

The tenant testified that he does not deny posting a notice to the fence, however, it was not his intent necessary to deny access to the rental site and access was not denied because he waited and watched the gate from 1 pm to 5 pm and the landlord never attended to the site.

The tenant testified that he does not deny that he received another site inspection for November 23 - 24, however, it was received on November 21, not the 22 as stated by the landlord's agent. The tenant stated in response he sent the landlord a letter dated November 22, 2013, as filed in the landlord's evidence. The tenant agreed that the letter of November 22, 2013, is self explanatory.

The tenant testified that he does not deny that he received another site inspection on December 9, 2013, which was to occur on December 14- 16, 2013, and in response he sent the landlord a letter dated December 11, 2013, as filed in the landlord's evidence. The tenant agreed that the letter is self explanatory.

The tenant testified that the landlord has filed no proof that he received the notice of the site inspection for December 21, 2013, although the tenant stated he does not deny that it was received by registered mail on December 17, 2013. The tenant stated that in response to the notice he sent the landlord the letter dated December 18, 2013, as filed in the landlord's evidence. The tenant agreed that the letter is self explanatory.

The tenant agreed when the landlord attended the rental site on December 21, 2013, that he adamantly denied access to the rental site.

The tenant further argued that in his tenancy agreement, he is responsible for the driveway, landscaping and there absolutely no reason for the landlord to attend onto his rental site.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the tenant has breached the Act, by interfering with the landlords lawful right or interests in the rental site.

In this case, the tenant 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. Since the application was filed the tenant has denied access to the rental site to inspect these items.

Access for the site inspections was denied on November 17, 2013, as the tenant was relying on the deeming provisions under the Act. However, it is very clear by the tenants testimony that he had received the notice on November 16, 2013. Further I find the tenant testimony conflicted to the actual time it was received and it is just as likely that he had been served with sufficient notice under the Act.

Further, I accept the landlord testimony that they went to the site on November 17, 2013, as the landlord had a photograph of the notice posted by the tenant and it was reasonable under the circumstance for the landlord to interpret the notice as a refusal.

While the tenant alleged he was home the entire time and the landlord did not attend the site as he watched the gate the entire time, I find that to be highly unlikely that for four hours did not leave the window for any purposes. Further, even if the landlord did not attend the rental site, there is no breach of the Act by the landlord. That does not give the tenant any right to deny the landlord any future access to the rental site.

Access for the site inspection on November 23, 2013, was again denied by the tenant by letter, dated November 22, 2013. Although the tenant acknowledged that he received the notice on November 21, 2013, and the notice filed in evidence clearly states the purpose was to address the tenant concerns and provided dates and times of the inspection.

The response from the tenant as stated in their letter was that it is an "unreasonable expectation of their time". However, there is no requirement for the tenant to be present during the site inspection and it would be reasonable to cooperate with the landlord, even when there may be a temporary inconvenience when these inspections or repairs occur as they are for their own benefit and made at their request.

Access for the site inspection on December 14 - 16, 2013, was again denied by the tenant by letter, dated December 11, 2013. Although the tenant acknowledged that he received the notice on December 9, 2013, and the notice filed in evidence clearly states the purpose was to address the tenant concerns and provided dates and times of the inspection.

Access for the site inspection on December 21, 2013, was again denied by the tenant by letter on December 18, 2013, although the tenant had received a warning from the landlord that they would be attending the site and any interfere of the site inspection would be grounds to end the tenancy. However, the tenant again denied access when the landlord, two arborists, an engineer and two police officers attended the rental site.

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 tenant may deny the landlord access. However, in this case, I find the tenant had no lawful right to deny the landlord access on any of the dates for the site inspections as the tenant had received sufficient notice and the landlord was there for a "reasonable purpose", which was to address their concerns as set out in their application for dispute resolution.

Although the letters sent by the tenant indicated that he had provided more that abundance of evidence concerning the issues of dispute, the landlord is the owner of the property and they have 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 tenant has 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 tenant has breached the Act, by denying the landlord access to the rental site **and** the tenant has stated in their letters, that the landlord should seek an order of the Director to grant access 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 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, 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 rental site.

Although this is not required by my order, the landlord may, as courtesy provide the tenant with notice of the site inspections/repairs, to ensure any pets are secured or if any other special requirements are required by the tenants. For example the tenant may be required to prepare the site to allow easy access to the area underneath the home site for a drainage inspection.

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 tenant is ordered that they are not to obstruct or interfere with any of the site inspections or repairs that made be made.

The **tenant is 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 **tenant is cautioned** 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 tenant 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 tenant. Should the tenant 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 tenant.

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 10, 2014

Residential Tenancy Branch

