



Dispute Resolution Services

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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 tenants.

The landlord's agent attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on January 15, 2014, and the Canada post track history indicated the tenants received the package on February 12, 2014.

I find that the tenants have been duly served in accordance with the Act.

The landlord's agent gave testimony and was provided the opportunity to represent their evidence, orally and in written and documentary form and make submission at the hearing.

Issue to be Decided

Should the landlord be granted an order to allow entry upon the rental site?
Is the landlord entitled to recover 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, which in part reads,

"... I wish my concerns to be address in this Dispute Resolution application so that the following matters are clarified. ...

The driveway on my lease lot had deteriorated and is significant tripping hazard and therefore a risk to the health and safety of myself, my children and my guests. ...

...site drainage needs of the Park are being neglected... This oversight/shortcoming on the part of my landlord, has increasingly adversely impacted on my use and enjoyment of my leased lot and the safety & health of my family...

The site drainage is clearly a problem with adverse effects on the Respondent/Landlord supplied septic system which has repeatedly backed-up due to soil saturation conditions...The 'brown water backflow through my plumbing system drains has been so severe that we have had to take temporary residence at my ...

The trees on my lot are overgrown ... pruning and cutting requirement exists..."

[Reproduced as written]

The landlord's agent testified that since October 2013, she has attempted to gain access to the site on four occasions 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' concern in their application.

The landlord's agent testified that on November 16, 2013, they served the tenants with written notice of a site inspection, in person, which the inspection was to occur on November 17, 2013. However, when they attended the rental site the tenants had posted a notice denying access and the tenant also stated she wanted her father to be present. Filed in evidence is a copy of the notice of site inspection.

Filed in evidence is a copy of the tenants' notice in response, 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 that the tenants were again served notice with a notice of a site inspection, for an inspection on November 23 - 24, 2014. However, they received a letter from the tenants which acknowledged they received the notice on November 21, 2013 and the letter was denying access. Filed in evidence is a copy of the notice for site inspection.

Filed in 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 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 09, 2013, the tenants were again served with a notice of site inspection, by posting to the door, that they would attend the site on December 14 -16. The landlord's agent stated that the tenant again denied access as she wanted her father present. Filed in evidence is a copy of the notice of that site inspection.

The landlord's agent testified on December 14, 2013, she sent another notice for site inspection by registered mail which was received by the tenants on December 19, 2013. The landlord stated the inspection was to occur on December 21, 2013, and she had arranged for an engineer, and two arborists to attend to do a risk assessment and they were again denied access by the tenant to the rental site. Filed in evidence is a copy of the notice of site inspection.

The landlord's agent stated that they have incurred extra costs, as she is required to pay for the engineer and arborists when they attend to the site, even when access is denied.

The landlord's agent testified that they seek an order under section 23(c) of the Act, authorizing the landlord entry to the rental site.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the tenants have breached the Act, by interfering with the landlords 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. Since the application was filed the tenants have denied the landlord access to the rental site to inspect these items.

Access for the site inspections were denied on November 17, 2013, and December 14 - 16, 2013, because the tenant wanted her father present. However, I note her father is not a tenant under the tenancy agreement and has no legal rights or obligations under the Act. The tenant had also had posted a notice denying access on the entry of her rental site on November 17, 2013.

Access for the site inspection was again denied on November 23, 2013, although the notice filed in evidence clearly states the purpose was to address their concerns as stated above and provided dates and times of the inspection which the tenant had sufficient notice.

The response from the tenants as stated in their letter was that it is an "unreasonable expectation of their time". However, there is no requirement for the tenants 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 was denied on December 21, 2013, although the tenant received the notice on December 19, 2013, by registered mail, clearly showing the tenant had sufficient notice, and the notice filed as evidence clearly states the purpose was to address their concerns as stated above and provided dates and times of the inspection.

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 tenants had no lawful right to deny the landlord access to the rental site as the landlord was there for a "reasonable purpose", which was to address their concerns as set out in their application for dispute resolution.

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 stated in their letter of November 23, 2013, **that they will not allow access without an order of the Director.** 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 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 may have been completed.

Although this is not required by my order, the landlord may, as 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. For example, the tenants may be required to prepare their site to allow easy access to the area underneath the home site for drainage inspections.

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 have been 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** 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 10, 2014

Residential Tenancy Branch

