



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, O

### 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 10 day Notice to End Tenancy was sufficiently served on the Tenant on June 2, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated June 2, 2014?
- b. Whether the tenant is entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to an order that the tenant comply with section 26(2) within 2 weeks of the date of the order that the tenant clean up the manufactured home site he is renting from the landlord..

### Background and Evidence

The tenancy began approximately 26 years ago. The tenant rents the manufactured home pad and the rent is presently \$215.40 per month.

The landlord purchased the manufactured home park in 2013 and is in the process of taking steps to make significant upgrades to the park infrastructure. On January 13, 2014 the landlord delivered a Clean Up Notice demanding that all tenants remove all property including debris, garbage, boats, campers, nonoperational or uninsured automobiles, lumber fishing gear, parts from outboard engines etc.

On February 12, 2014 the landlord delivered a notice to all tenants advising there would be an information meeting for all registered owners on February 18, 2014 where the manufactured home owners could share their concerns with the new management.

The landlord produced a copy of the park rules which were delivered on March 3, 2014 and re-delivered on April 16, 2014. The park rules were taken from a set of rules used by other manufactured home parks.

On March 10, 2014 the on-site agent for the landlord offered to provide the tenant with a weekend of personal labor and assistance in removing anything the tenant wished removed. The tenant did not take up the landlord's offer.

On April 16, 2014 the landlord gave written notice to all of the tenants that construction would start on April 28, 2014 and requesting the tenants remove all of their belongings. The notice states the landlord would be replacing all utility lines, performing extensive site leveling, upgrading all parkways, water & sewage lines and roadways and clearing land for additional site pads. It all advised the landlord was providing 2 disposal bins for the convenience of the manufactured home owners.

On April 23, 2014 the landlord delivered a Site Specific Readiness Notice asking for the tenant to remove specific items including

- all boats and RV,
- structures and stored materials that are on the utility right-a-way
- motor parts and equipment including over 2 dozen boat motors and additional parts
- fuel storage containers

On April 23, 2014 the landlord's agent offered to hire laborers at the landlord's expense and under the tenant's supervision and direction to complete the required clean up.

On May 5, 2014 the landlord gave the tenant a notice expressing concern about the tenant using the property for a repair service.

The landlord produced a sketch map prepared by the landlord showing the manufactured home park and the right-a-way that contain the utility connections. The landlord also produced a number of photographs showing the debris on the tenant's pad including a camper, wood debris, a bus camper that has not been insured for 12 years, two boats, a disposed of scooter, outboard engine and engine parts, gas canisters etc.

On cross-examination the representative of the landlord acknowledged that the diagram on his sketch map was prepared for the hearing and it was not based on marked boundaries.

The tenant testified as follows:

- He does not have an agreement with the present landlord.
- He testified he has already taken some 15 motors to the salvage yard and they refuse to take any more motors. The owner of the salvage yard refuses to allow him to return any more.

- The previous owner agreed with him he could keep the belongings on the rental property.
- He has been told the lot is his to do what he wants.
- He is 76 years of age and for health reasons he cannot work in heat and rain.
- The landlord's Rules are ridiculous
- His manufactured home lot is not unsanitary.
- Some of the belongings on the manufactured home pad are not his.
- The landlord does not know where exactly the water and sewage lines are.
- He did not trust the landlord when he offered to assist him in cleaning the rental property fearing the landlord would charge him for the work.

In final submissions the representative of the tenant stated:

- The sketch map showing the location of the right-of-way is not reliable as it is not based on any marked boundaries.
- Section 26(2) requires that the tenant maintain "reasonable health, cleanliness and sanitary standards throughout the manufactured home site and in common areas." The presence of mess is not the same thing as the failure to maintain health, cleanliness and sanitary standards.
- There was an implied agreement between the tenant and the previous landlord that he be permitted to use his manufactured home pad in the manner in which he is using it.
- The requirement that the tenant clean the property within 2 weeks is unreasonable.

The landlord submitted as follows:

- The Park Rules that are in place are standard rules taken from other manufactured home parks.
- It is not possible for the landlord to fulfill its statutory duty under section 26(1) to provide and maintain the manufactured home park in a reasonable state of

repairs unless the tenant moves his debris and thereby give the landlord access to do the work that is necessary.

### Analysis

#### Tenant's Application to Cancel the 10 day Notice to End Tenancy:

Both parties agreed the 10 day Notice to End Tenancy should be cancelled. The tenant owed a small sum of money but the money was paid within the 5 day period that would void the Notice. As a result I ordered that the 10 day Notice to End Tenancy dated June 2, 2014 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. I dismissed the tenant's application for the cost of the filing fee as such an application would not be necessary that the full rent been paid when due.

#### Landlord's Application that the Tenant comply with section 26(2) of the Manufactured Home Park Tenancy Act:

This is a difficult case. I am sympathetic to the position of the landlord. In my view the landlord has been more than reasonable with its requests and how it has conducted itself in dealing with the tenant. The landlord cannot be faulted in attempting to make improvements to the park. The landlord has given the tenant and other tenants in the park ample notice to clean the manufactured home pad. It has attempted to engage with tenants in a proper way to deal with outstanding issues. On two occasions the landlord has offered to give tenant assistance in removing the belongings but the tenant has refused to take the landlord up on his offer. I do not accept the explanation of the tenant that he does not trust the landlord as sufficient. It is not difficult to put agreements in writing. Further, I do not accept the submission of the agent for the tenant that there was an implied term in the tenancy agreement with the previous owner that the tenant could use the manufactured home park site with all of the ensuing mess.

However, for the reasons which follow I determined that while it may very well be that the landlord has grounds to have the tenant comply pursuant to the Park Rules, the landlord has failed to prove it has grounds under section 26. I determined it would be

dangerous and improper for an arbitrator to issue an order on the basis of the Park Rules as this was not the basis for the landlord's Application for Dispute Resolution and it was not sufficiently argued at the hearing. The Manufactured Home Park Tenancy Act and Regulations have extensive provisions on the selection of a Park Committee and the establishment of Park Rules whether or not a Park Committee. For the assistance of the parties I have enclosed some of the relevant provision.

Section 31 - 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 28 of the Manufactured Home Park Tenancy Act Regulation deals with the formation of a Park Committee. I am advised by the parties that presently the park does not have a Park Committee. Section 29 and 30 of the Regulations deal with the formation of Park Rules and provide as follows:

## **Part 4 — Park Rules**

### **Disclosure**

- 29** (1) Prior to a person's entering into a tenancy agreement with a landlord, the landlord must disclose in writing to that person all rules in effect at the time of his or her entering into the tenancy agreement.
- (2) Subsequent to a tenant's entering into a tenancy agreement with a landlord, the landlord must give notice in writing to that tenant of any rule at least two weeks before the rule becomes effective.

### **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.

The landlord is in the process of making significant changes to the manufactured home park. Many of the tenants have agreed to the landlord's requests to clean up their pads. Others have. I determined that it would not be appropriate in this hearing for me to determine the rights and obligations of the parties based on the Park Rules as it was not identified as a ground in the landlord's application, it was not sufficiently argued before me and given the transitional stage the landlord is facing, any determination based on the Park Rules may affect other tenants who have not been given notice. Either party has liberty to file a claim seeking a determination of the effect of the Park Rules.

I determined the landlord has failed to establish sufficient grounds for an order that the tenant comply based on a breach of section 26 of the Manufactured Home Park Tenancy Act which provides as follows:

**Landlord and tenant obligations to repair and maintain**

**26** (1) A landlord must



- (a) provide and maintain the manufactured home park in a reasonable state of repair, and
- (b) comply with housing, health and safety standards required by law.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the manufactured home site and in common areas.

(3) A tenant must repair damage to the manufactured home site or common areas that is caused by the actions or neglect of the tenant or a person permitted in the manufactured home park by the tenant.

The obligation imposed on the tenant under section 26(2) is to “maintain health, cleanliness and sanitary standards.” I determined there is considerable debris left on the rental property and it is unsightly. However, the landlord failed to establish this amounts to a failure to maintain health, cleanliness and sanitary standards. There is no evidence from health officials the tenant has breach any health regulations or standards. There is insufficient evidence from the landlord of a breach of health, cleanliness and sanitary standards. Similarly, the landlord has failed to prove that the conduct of the tenant has prevented the landlord from fulfilling its statutory duty to provide and maintain the manufactured home park in a reasonable state of repair or “failure to comply with housing, health and safety standards required by law.”

#### Summary:

In summary I ordered that the 10 day Notice to End Tenancy dated June 2, 2014 be cancelled. I dismissed the tenant’s application for reimbursement of the cost of the filing fee. I dismissed the landlord’s application that the tenant comply with section 26 of the Manufactured Home Park Tenancy Act.

I determined it was not appropriate to make a determination on whether the landlord has grounds to seek an order based on the Park Rules. If the parties are unable to resolve this either party has the right to file an application seeking a determination as to whether the landlord has grounds to obtain an order based on the Park Rules.

This decision is made on authority delegated to me by the Director of the *Manufactured Home Park Tenancy Act*, SBC 2002, c. 77.

Dated: July 29, 2014

---

Residential Tenancy Branch

