



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF, O

Introduction

This hearing was to hear an application by the tenant for orders setting aside a 1 Month Notice to End Tenancy for Cause and compelling the landlord to comply with the Act, regulation or tenancy agreement. Both parties appeared and had an opportunity to be heard.

At the beginning of the hearing the parties advised that they had resolved their differences regarding the circumstances that had led to the notice to end tenancy being issued and they were agreed that the tenancy would continue.

The hearing proceeded on the second part of the tenant's application only.

Issue(s) to be Decided

What is the correct interpretation of the tenancy agreement?

Background and Evidence

This month-to-month tenancy commenced November 1, 2008. The rental unit is a pad in a manufactured home park. There is a written tenancy agreement. Attached to and forming part of the tenancy agreement are the Park Rules and Regulations.

The portion of the Rules is dispute is :

“C.5. No fence can be erected without the prior written approval of the Landlord. All fences . . . must not be any closer to surrounding roadways than the front of the mobile home.”

The tenant's home is on a corner lot. The narrow part of her home is parallel to a secondary road; the long portion of her home is parallel to the main roadway into the manufactured home park. The tenant's driveway and main entry to her home are oriented to and accessed from the secondary road.

The undisputed evidence is that the narrow part of her home is 19 feet from the roadway and the long portion of her home is about 35 feet from the roadway.

At the back corner of the lot is a shed – the property of the landlord – that contains a hydro meter and switching gear. The parties referred to this structure as the hydro shed.

The tenant wants to build a fence to contain her little dog. The parties have been discussing the possible location of the fence but have not been able to come to any agreement. Some of the complicating factors to this discussion are the presence of two large trees on the lot and the landlord's need to maintain access to the hydro shed.

The landlord's position is that this lot has "two fronting streets". Since the narrow side of the manufactured home is 19 feet from the roadway then the fence on the long side of the manufactured home should also be 19 feet from the main roadway.

The landlord stated that the roadway parallel to the long side of the home is the only access in and out of the park for several dozen existing and potential homes. The paved portion of the road is only 20 feet wide and for safety reasons he wants to maintain a proper setback along the road. He points out that municipal roads would normally have a 17 to 20 foot boulevard.

The tenant's position is that she only has one front to her home and the tenancy agreement does not address her situation.

Analysis

There is no question that a landlord may establish, change, repeal and enforce rules governing the operation of a manufactured home park or that rules regarding the maintenance and appearance of manufactured home pads and the additions tenants place on those pads are of benefit to everyone residing in the park. Further, there is no question that maintaining a safe width to all access roads in a manufactured home is a reasonable objective.

The only issue in this case is the interpretation of one particular rule that is part of this tenancy agreement; i.e. "All fences . . . must not be any closer to surrounding roadways than the front of the mobile home."

There are legal principles that govern the interpretation of express contractual terms. They are:

1. Where there is no ambiguity in a written contract it must be given its literal meaning.
2. Words must be given their plain, ordinary meaning, unless to do so would result in an absurdity.
3. If there are two possible interpretations, one which is absurd or unjust, the other of which is rational, the one which is rational shall prevail.
4. In cases of doubt, language should be construed against the drafter of the contract. This rule, called by its Latin name, is the "contra preferentem" rule.

The tenancy agreement does not define “front”. The ordinary dictionary definition of “front” is “the part or surface of something” that usually faces forward; “the face of a building”, and “frontage” is defined as “the front face of a building; the land between the front of a building and the street”.

The ordinary use of language is that square or rectangular objects have one front, one back, and two sides.

In the hearing both parties referred to the narrow part of the manufactured home as the “front” of the home.

The rule refers to “surrounding roadways”; not “the roadway in front of the manufactured home.” By using the plural, the tenancy agreement does cover the situation where there is more than one roadway adjacent to the manufactured home. Accordingly I find that the proper interpretation of the tenancy agreement is that any fence constructed by the tenant must be at least 19 feet back from the roadway along the long side of her home as well as the short side, unless the parties come to some other agreement.

As the tenant was only partially successful on her application no order for reimbursement from the landlord of the filing fee she paid to file her application will be made.

Conclusion

A finding that the proper interpretation of the tenancy agreement is that any fence constructed by the tenant must be at least 19 feet back from the roadway along the long side of her home as well as the short side, unless the parties come to some other agreement.

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: September 26, 2014

Residential Tenancy Branch

