Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Accent Holdings & Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, OLC, RP, PSF, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation estimated in the sum of $20,000.00 for damage or loss under the Act; that the landlord be Ordered to comply with the Act, the landlord make repairs to the unit, site or property, the landlord provide services or facilities required by law and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

At the start of the hearing the tenant was asked to point out the detailed breakdown of the claim made in the sum estimated at $20,000.00. The tenant said that she was unable to provide a detailed calculation as part of the application as she has not been able to access the one side of her home, to assess the cost of repairs. The tenant said that her claim for repair is in relation to those needed as a result of the landlord's refusal to allow her access to the one side of her home.

The only calculation of a claim indicated in the documents served with the application was a request for return of the site rental paid over a one period of time. This claim did not relate to the sum indicated on the application.

I then decided that the monetary claim and request for repair portion of the application would not proceed, based upon section 59(5)(a) of the Act which provides the authority to decline an application when it does not comply with 59(2)(b) of the Act, by disclosing the full particulars of the claim. The tenant supplied only an estimate of the claim; no

monetary worksheet was submitted or any other details that would allow the respondent to adequately respond. Therefore, these portions of the application were declined, with leave to reapply.

The tenant stated she had applied requesting repair to her unit as a result of the landlord's refusal to allow her access to a portion of the exterior of her home. The tenant had no details on what repairs these might be; therefore, this portion of the claim was dismissed with leave to reapply.

Throughout the tenant's written submissions the tenant has used a highlighter on documents. I pointed out that those sections highlighted were rendered illegible.

Issue(s) to be Decided

Must the landlord be Ordered to comply with the Act by allowing the tenant use of a portion of a rental site?

Background and Evidence

The parties agreed that the tenancy commenced in the fall of 2004; the tenant owns her home and rents site #29. Rent is $330.00 per month, due on the 1st day of each month. The parties confirmed that neither has a copy of a signed tenancy agreement or Park Rules. The tenant agreed that she is bound by the enforceable terms of the unsigned tenancy agreement and Park Rules that were supplied as evidence by the landlord.

The landlord provided a copy of a park map; there is no site plan available that provides the dimensions of each site.

The tenant referenced a contentious relationship with the previous owners of the home on site #28; which adjoins site #29. Those individuals have now sold their home and new owners recently took possession.

The tenant provided a number of photographs of her site and the neighbouring site. In 2008 the owners of the home on site #28 installed a fence from the front of their home; across the driveway area, abutting the back, mid-point, on the side of the tenant's home. The tenant confirmed that she has a similar fence running along the other side of her site; which abuts the home placed on the neighbouring site.

There is an older fence that runs from the back corner of the tenant's home, to a fence at the rear of site #29 and #28; dividing her site from site #28. This fence has obviously been in place for some time and is leaning over.

The tenant wants the landlord to comply with the Act by ordering the neighbouring owners on site #28 to remove the section of fence that obstructs her access along the side of her home. The tenant said she has been thwarted from being able to access and complete repairs and clean windows. The tenant also stated that the property alongside her unit facing #28 is her property. The tenant said she does not wish to use

the property, but does require access to the side of her home. The tenant said that since the fence was installed she has dealt with the landlord, in attempts to have the fence removed. Up until 2008 the tenant said she had access along this side of her home; when the fence was not in place. While she has the same type of fence on the other side of her unit; if her neighbours asked her to remove that fence, so they could access that side of their home; she would immediately do so.

The tenant supplied a copy of an August 2007 City of Campbell River zoning bylaw which requires lot size of manufactured homes to have a minimum site width or frontage of 4.0 meters. The tenant said that the placement of the fence is contrary to the bylaw requirement. The tenant asserted that the owners of the home on site #28 have been using her property and denying her access to a portion of her site which should extend up to 5 feet.

The tenant said that in 2008 when she attempted to enter the area alongside her home the police were called by the neighbours. The tenant has not formally dealt with the issue of access before this hearing as a result of a "medical funk."

The landlord stated that there has always been a fence running from the side of the home on site #28, to the side of the tenant's home. The landlord pointed to a photograph of the fence, which has what appears to be an original, older post, indicating the fence has been rebuilt over the years.

The landlord said that the fence that runs from the back corner of the tenant's home, to the rear of the property is indicative of what has always been considered the lot-line of the site. The tenant is suggesting that the fence running to the side of her home should be removed; which would extend the tenant's site beyond that delineated by the fence that runs from the back corner of the home; essentially creating an irregularly shaped site. The landlord stated this would also provide the tenant with additional space that has never been considered as hers to use.

The landlord pointed to a July 18, 2012 letter sent by legal counsel to the tenant; included in the tenant's evidence. The letter referenced the tenant's intention to install a wheelchair ramp alongside her home and the need to provide 24 hours notice for access. The tenant denied having been expected to provide notice of entry. The landlord said that the tenant and the owners of #28, at the time, had come to a verbal agreement, allowing the tenant to enter the property with notice but that agreement fell apart.

The park manager said he has lived in the park as long as the tenant has and can attest that there has always been a fence of some sort running from the home on site #28 to the side of the home on site #29. Initially it was a short picket fence and 2008 it was replaced. There are quite a few homes in the park that have fences abutting the neighbouring homes. At one point the tenant and the past owners of #28 had agreed to install a gate so the tenant could access the yard but they eventually had a dispute. The manager said the tenant is free to give 24 hours notice of entry if she has a need to

access the side of her home. The manager stated that the new owners of the home on site #28 would like to replace the derelict fence that runs from the back corner of the tenant's home, but that the tenant has not given them permission.

The tenant supplied copies of correspondence sent to the landlord, commencing in 2006 in relation to allegations including harassment by other occupants of the park, the behaviour of other occupants of the park, garbage and, in 2010, a dispute related to access to the property to allow installation of a ramp.

Analysis

I have considered the tenant's claim requesting removal of the fence alongside her home, so that she may have unfettered access to that side of her unit. From the evidence before me I find that the tenant currently has easy access to one-half of the side of the home; it is the portion beyond the mid-point of the home, behind the neighbouring fence, that is in dispute.

From the evidence before me I find, on the balance of probabilities that the orientation of the tenant's unit on the site rented is such that the side-point of the home, where the fence running from unit #28 ends, forms the side boundary of the site. I have come to this conclusion based on the presence of a similar fence that runs from the other side of the tenant's home, abutting her neigbours unit and the presence of the fence which runs from the back corner of her unit to the property line at the rear of the site, between site 2#29 and #28.

If I were to accept the tenant's submission that the fence from unit #28 encroaches on the tenant's site I would also have to find that the site line runs for the 3 to 5 feet from the side of her home, turning at a point adjacent to the back corner of her home, then running from the back corner of her home to the rear property line; resulting is an irregular site lot-line. I have rejected that possibility and accept that the site lot-lines run in a straight line. The park map supplied as evidence by the landlord indicates that all sites have lots lines that run in straight lines; a plan that, on the balance of probabilities, seems likely.

There was no dispute that the lot in question is at least 4.0 meters wide or 300 square meters, as required by section 5.20.3 of the bylaw; the tenant interprets the bylaw to mean 4.0 meters on the side of the home. There was no evidence before me indicating that the local government authority has issued any order in relation to contravention of this bylaw.

Therefore, I find that the landlord will not be Ordered to have the fence running from the side of site #28 to the mid-point of the home on site #29, removed and that the tenants' request is dismissed.

In relation to access to the side of her home facing site #28, I Order that the tenant may arrange access, for any reasonable purpose such as repair, inspection, window

cleaning, by giving the landlord advance written notice. The notice must comply with section 23 of the Act; as the landlord will then be required to provide the occupants of site #28 with the notice. The Act does not contemplate notice being given by tenant to tenant.

Section 23 of the Manufactured Home Park and Tenancy Act provides, in part:

> ***23*** *A landlord must not enter a manufactured home site that is subject to a tenancy agreement for any purpose unless one of the following applies:*
>
> *(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*
>
> *(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*
>
> *(i) the purpose for entering, which must be reasonable;*
>
> *(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*
>
> *(c) the landlord has an order of the director authorizing the entry…*

When giving the landlord the written notice the tenant will:

- Provide the landlord with prior written notice of the need for entry which may be given to the owners of the home on site #28;
- the notice will provide the date of entry, the time of entry (only between 8 a.m. and 9 p.m.) and the purpose of entry;
- The landlord will then serve the notice of entry to the owners of the home of site #28;
- Service of any notice shall be completed in accordance with section 83 of the Act, which is appended after the conclusion of this decision;
- The landlord must endeavour to serve the notice of entry without unreasonable delay; and
- The landlord must immediately notify the tenant of any problems encountered with service of the notice that could result in delayed access.

The tenant should provide the landlord with the notice of entry well in advance, to allow service to the owners of the home on site #28, as required by the legislation. Provision of a notice only several days prior to the expected entry date may result in a failure of service.

This Order does not preclude the tenant and the home owners on site #28 from coming to a verbal mutual agreement for entry. Mutual agreement would negate the need for written notice of entry.

Written notice of entry shall only be requested for legitimate needs and not be frivolous or frequent. If that occurs the landlord is at liberty to submit an application for dispute resolution to place limits on access.

As the application has, on the whole, failed I decline filing fee costs to the tenant.

There was no claim related to the removal of services or a facility required by law.

Conclusion

The tenant's application requesting Order she be given unfettered access to the side of her unit and that a fence be removed is dismissed.

An Order has been made in relation to the tenant's ability to access the side of her home.

The balance of the application was declined with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*

Dated: September 10, 2014.

Residential Tenancy Branch

When documents are considered to have been received

83 *A document given or served in accordance with section 81 [how to give or serve documents generally] or 82 [special rules for certain documents] is deemed to be received as follows:*

(a) if given or served by mail, on the 5th day after it is mailed;

(b) if given or served by fax, on the 3rd day after it is faxed;

(c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;

(d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.