



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

DRI, OLC

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have disputed an additional rent increase and requested an Order the landlord comply with the Act.

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.

Issue(s) to be Decided

Has the landlord issued a notice of rent increase that is not in compliance with the Act?

Should the landlord be Ordered to comply with Act in relation to the boundaries of the rental site?

Background and Evidence

The tenancy commenced in 2009; rent is currently \$290.00 per month due on or before the 1st day of each month. Neither party has a signed tenancy agreement. The landlord's agent began work at the Park this past March and attempted to have all tenants sign agreements; the tenants have chosen not to do so. The parties were informed they would then be bound by the standard terms set out in the Schedule of the Manufactured Home Park Tenancy Regulation. The tenants were given a copy of the Park Rules in 2009.

The tenants provided black and white copies of photographs showing the rental site and the area that they have used since 2009. The site dimensions are now in dispute. The

tenants have placed a fence on one side of the site; which they say forms one boundary. On the opposite side of the home the tenants have a space that is used for storage and for a small storage shed. This side of the site has what appears to be a row of trees just on the far side of the shed.

The site next to the area where the shed sits is vacant and the tenants agreed that is not a site that they rent; they referred to it as common area. A tree fort has been installed on that site; with materials donated by several occupants of the park, including the tenants. The landlord agreed that if the park management decides to dismantle the tree fort those who contributed to the construction will be given a minimum of 2 weeks' notice to remove the materials they wish to salvage.

The landlord wishes to place another manufactured home on the site where the tree fort is located. The landlord stated the tenants have encroached onto this site by placing the shed and other items in the area. The landlord pointed to a water service to the right of a row of trees that run along what appears to be the border of the area where the tree fort is located. The landlord said there is only 1 tree and that the new home would be placed behind that tree. The tenants said that there is a row of 3 trees in front of the tree fort. A photograph of the area was supplied by the tenants that showed what appeared to include foliage from more than 1 tree.

The landlord submitted 14 coloured photographs to the Residential Tenancy Branch. When I referenced the photos the tenants said they were having trouble discerning the details. I determined that the photos given to the tenants were black and white copies and not coloured, developed photos. As I had superior copies before me and the tenants had not been given identical copies, the landlord's pictures were set aside and we relied upon the tenant's black and white copied photographs.

The landlord provided a hand-drawn site map for the road and sites in the area of site #76, where the tenants reside. The landlord said they do not have a site map of the park as the park was created in the mid-1960's. The landlord confirmed that no steps have been taken steps to comply with section 12 of the Regulation that came into effect on January 1, 2004.

The landlord said that the tenants should have use of a site that is 38 feet across; they currently have 68 feet; although neither party provided a detailed measurement of the site that is in use. The tenants said that there are a number of other sites in the park that are large and have either large frontage areas or back yards. The tenants said the site they use is 40 feet across, not 70 feet.

The landlord stated that the previous park manager never gave the tenants permission to use additional space outside of their site. The landlord confirmed that there was also no letter ever issued informing the tenants of the need not to use the space that they occupy.

The tenants said that the portion of the application related to a rent increase is based on the indication by the landlord that if the tenants continue to encroach on property that does not form their site they will be charged additional rent in the future.

Analysis

I have considered section 12 of the act, which provides:

Terms that must be included in a tenancy agreement

12 (1) *A landlord must ensure that a tenancy agreement contains*

(a) the standard terms, and

(b) the boundaries of the manufactured home site measured from a fixed point of reference.

The tenants have not been provided with a site map that complies with this section of the Act that became effective on January 1, 2004. The landlord has had ample opportunity to produce such a home site boundary record to the tenants.

In the absence of more than a hand-drawn map of the sites in question I have relied upon the testimony of the parties in relation to what the boundaries of site #76 would be. From the photographic evidence before me I find that since the start of this tenancy in 2009 the tenants have used what they believed to be the site #76. There was no evidence presented by the landlord to refute this use; no letters informing the tenants they were encroaching on other sites or any other evidence that would have indicated to the tenants that site #76 was not in fact the area that they have been using for 5 years.

Therefore, pursuant to section 55(3) of the Act, I find, on the balance of probabilities that the site occupied by the tenants, as site #76, constitutes that which:

- runs from the fence on one side of the home;
- over to a straight line that runs 2 feet beyond the shed on the other side of the home.

This means that the row of trees to the right of the shed, when looking from the road, is on the neighbouring site and that the lot-line on that side of the site starts 2 feet from the edge of the shed.

I rejected the suggestion that the tree line is part of the tenant's site, as the tree fort appears to be in line with those trees and the tenants have agreed that the tree fort is not part of their site.

I have made this decision in the absence of any measurements provided by the tenants, showing the actual area used. The presence of belongings spread over an area does

not convince me that those areas form part of the site and I have determined that the boundary is reasonably set 2 feet from the edge of the shed.

If the tenants have any items that are beyond the line running to alongside of their shed they should ensure they are moved to an area within their site.

In relation to an additional rent increase; the rent shall remain at the current amount unless proper notice of rent increase is given in accordance with the legislation. I find that the tenants are not required to pay rent for more than the 1 site that they are renting.

Conclusion

The boundary of the tenant's site has been determined.

There has not been an additional rent increase issued.

This decision is final and binding and 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 11, 2014

Residential Tenancy Branch

