



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

Q

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to dispute the amount of rent being charged for the manufactured home park pad. The tenant is seeking monetary compensation for loss of value to the original tenancy by reducing the original area of the tenant's yard.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Preliminary Matter

In the Schedule of Parties, the tenant had included a person who is the manager of the adjacent mobile home park. The tenant testified that after they entered into the tenancy with the landlord, their lot size was reduced by the landlord moving subdividing the lot and moving another manufactured home on the lot.

The tenant also pointed out they later discovered that a portion of their yard, which is part of the pad their manufactured home sits on, is owned by the adjacent mobile home park and that there was some form of legal easement agreement between their landlord and the adjacent park over which the two property owners are in conflict..

Despite this unique set of circumstances described above, I do not accept that the manager of the adjacent park has standing in the dispute before me. I find that I only have authority over disputes between the tenant and their landlord. I have no authority

over disputes between the landlord and adjacent property owners or between the tenant's and third parties, including the adjacent property owner.

Although I hereby find that the manager of the adjacent mobile home park does not have any standing in this dispute hearing, I do, however, recognize this individual as a witness in the proceedings.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation under section 60 of the Act for loss of value, in the form of a rent abatement?

Background and Evidence

The tenancy began in April 2010 and the pad rent being charged is \$257.50. The tenant testified that, when they rented the site, it was fenced and they accepted the tenancy based on the area shown. However, according to the tenant, the landlord later reduced the size of the pad to install another manufactured home without considering the impact on these tenants. The tenant pointed out that the landlord then changed their site number to reflect that an additional manufactured home site was inserted. The tenant testified that, despite this fact, the landlord did not reduce their pad rent to reflect the smaller size of the yard. The tenant feels that the reduction in the area and the inconvenience imposed by this situation warrant a rent abatement. The tenants are requesting a rent reduction of 50% from \$257.50 to \$128.75 per month.

The landlord does not agree to the tenant's request for a reduction in rent and argued that the tenants have no right to make such a demand. The landlord testified that a portion of the property line belonging to their park has been compromised by the neighboring park and the landlord has spent a significant amount of money to resolve the boundary matter. The landlord pointed out that the two parks are now involved in a legal dispute over certain sections of the land and they have consulted a lawyer over this matter.

Analysis - Monetary Compensation

The tenant is requesting a rent abatement for the reduction of value of the tenancy based on the reduction of their lot size in the park owned by the landlord.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 60, the Applicant has a burden of proof to establish that the other party did not comply with the agreement or Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7. The evidence must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the tenant to prove a violation of the Act and a corresponding loss.

I find that the landlord and tenant had originally contracted for a tenancy that included a lot represented to be part of the park, that was of a certain size.

Section 21 (2) of the Act does permit a landlord to terminate or restrict a service or facility, other than an essential service, under the following circumstances:

(a) the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. (my emphasis)

I find that the landlord did reduce the dimensions of the tenant's contracted pad site in a manner that was not compliant with the Act or agreement because of the fact that the landlord failed to reduce the rental rate by the amount of value lost.

Accordingly, based on the evidence before me, I find that the tenant is entitled to be compensated and I order that the rental rate for the Manufactured Home Park site must be reduced from \$257.50 to \$128.75 per month commencing November 1, 2014.

I make no findings on the issues relating to the disputed property lines nor anything to do with the disagreements or legal controversies that have arisen, or will arise, between this landlord and adjacent mobile home park.

Conclusion

The tenant is successful in the application and is granted a rent abatement of 50% for the loss of part of the yard and pad site.

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: October 14, 2014

Residential Tenancy Branch

