



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, OLC, MNDC, PSF

Introduction

A hearing was conducted by conference call in the presence of all 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.

All parties were given a full opportunity to present evidence and make submissions. Prior to concluding the hearing all parties acknowledged they had presented all of the relevant evidence that they wished to present.

Two sets of tenants have filed an application. The issue is the same in both applications and the applications have been joined. I find that both Applications for Dispute Resolution/Notices of Hearing filed by each set of tenants were personally served on the landlord on October 21, 2014. 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 tenants GLW and ELW are entitled to a monetary order to recover the cost of installing a manufactured home pad to met the specifications of their manufactured home and if so how much?
- b. Whether the tenants GLW and ELW are entitled to recover the cost of the filing fee?
- c. Whether the tenants JB and HB are entitled to a monetary order to recover the cost of installing a manufactured home pad to met the specifications of their manufactured home and if so how much?_f so how much?
- d. Whether the tenants JB and HB are entitled to recover the cost of the filing fee?

Background and Evidence of claim brought by GLW & ELW

The tenants GLW and ELW seek a monetary order in the sum of \$17,007.42 to recover the costs they have paid to install a manufactured home pad to meet the requirements to place their manufactured home on the manufactured home pad. .

The manufactured home that previously sat on the pad suffered extensive fire damage. GLW and ELW approached the previous park owner and asked if they could install a new pad that met the specifications of their manufactured home and rent the pad from the landlord. On August 15, 2012 the previous park owner and GLW and ELW entered an agreement in writing the included the following:

WHEREAS:

....

B. The Tenant had requested that the pad, while fit for a manufactured home, be altered to fit the specific dimensions of the Tenants' manufactured home as the pad is too small for the specific manufactured home that the tenant wishes to bring to the pad.

C. The tenant has agreed to make those modifications solely because of the specific needs of the Tenant and City of Surrey.

NOW THEREFORE, in consideration of the promises made in this agreement, and other valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows;

1. On the terms and conditions contained below, and provided that the tenant and the landlord enter into a tenancy agreement, the Landlord will allow changes to be made to the pad to accommodate the specific requests of the Tenant as set out in the Schedule A attached to this agreement (the "alterations")

2. It is expressly agreed as follows;

a) The Landlord is not required to make the alterations or any changes to the pad in order to bring it up to state of decoration and/or repair that:

- 1) Complies with health, safety and housing standards required by law or;
- ii) Having regard to the age, character and location of the residential property,

would make it reasonably suitable for occupation by a reasonable tenant who would be willing to rent it.

b) That the Landlord is under no other legal obligation to make the alterations or any changes to the pad;

c) That the sole reason for any alterations or changes being made to the pad is because of the specific desires of the tenant and not otherwise.

d) The tenant agrees to pay to the contractor advance the actual cost of making the alterations including permit and license fees of a sum agreed upon.

3. The alterations become the property of the landlord, once performed. The landlord must approve all work done to the pad and is at liberty, in its sole discretion, to supervise all work.

4. The tenant agrees that they will not utilize the fact that the landlord made alterations as a factual basis to rely upon in any defense to a rent increase and the tenant agrees that the amounts spent to provide for the alterations will not be relied upon by the tenant to argue that there has been a hidden rent increase of any form by the landlord including monetary claims (Section 84 of the RTA)

5. The tenant will pay all the utility connection costs including water, sewer, gas, and electric and the work must be completed by contractors approved by the landlord

6. Without limiting the generality of the foregoing, the tenant hereby specifically covenants, represents and warrants to the landlord that she/he shall have no further claim against the landlord for, by reason of, relating to or arising out of any claim, including a claim for rent review, relating to the providing of the alterations pursuant to this agreement,

7. The Tenant hereby agrees that in the event of the commencement or continuation of any suit, action, proceeding, review or investigation in violation of this agreement, this agreement may be pleaded as a complete defense to any such action, and may be asserted by way of counterclaim or cross-claim in such action,

....

GLW and ELW presented evidence that they installed a new cement pad and asphalt driveway in the summer of 2012. They produced an invoice from a general contracting firm indicating it cost them \$17,007.42 to complete this work. They testified the new pad was necessary to meet Municipal Bylaws but they did not present a copy of the bylaws at the hearing.

The tenants produced page 1 and page 4 of a Manufactured Home Pad (Site) Tenancy Agreement for the rental of the pad. The part document does not include a date. Paragraph 13 of that agreement states the landlord will "provide and maintain the manufactured home padin a reasonable state of decoration and repair...."

GLW and ELW testified their tenancy began on September 1, 2012. The present pad rent is \$926 per month payable in advance.

They testified they were not happy about having to pay for the installation of the pad. After they moved in they discussed it with the person who identified himself as an agent for the tenants

and who was a Director of the Surrey Mobile Home Park Association. They filed the within application on October 20, 2014.

Background and Evidence of claim brought by JB and HB

JB and HB claim the sum of \$8925 for reimbursement of the cost they incurred to pay for driveway and pad which was necessary to accommodate their newly purchased manufactured home.

In the spring of 2013 a representative of a Dealership that sold manufactured homes approached the landlord asking whether if the landlord would permit a prospective purchaser to move a newly purchased manufactured home onto the pad. The manufactured home that previously occupied the pad had been damaged in a fire. The new home was a double wide and the present pad was not large enough to accommodate it. The landlord agreed with the representative of the Dealership (acting on behalf of JB and HB) and consented to JB and HB's application to the Municipality of Surrey for a new foundation pad for the purpose of installing a new manufactured home on the site. The representative of the Dealership testified at the hearing and confirmed that agreement between he and the landlord was that the tenants would be responsible for the application to the Municipality of Surrey and to pay the costs for any changes to the pad that were necessary.

JB and HB entered into a manufactured home pad (site) in writing that provided the tenancy was to commence on September 1, 2013 and continue on a month to month basis. The rent is \$839 per month. Paragraph 13 of the agreement provides that "The landlord will provide and maintain the manufactured home pad (site)...in a reasonable state of decoration and repair..."

Relevant Provisions of the Manufactured Home Park Tenancy Act:

This Act cannot be avoided

- 5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Enforcing rights and obligations of landlords and tenants

- 6 (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.
- (2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 51 (1) *[determining disputes]*.
- (3) A term of a tenancy agreement is not enforceable if
- (a) the term is inconsistent with this Act or the regulations,
 - (b) the term is unconscionable, or
 - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Liability for not complying with this Act or a tenancy agreement

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

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.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord is not required to maintain or repair improvements made to a manufactured home site by a tenant occupying the site, or the assignee of the tenant, unless the obligation to do so is a term of their tenancy agreement.
- (6) A landlord's obligations under subsection (1) (b) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

After carefully considering all of the evidence and the submissions of the parties I determined the tenants failed to establish a claim against the landlord for the cost of reimbursement of the money they paid to install or improve the pad for the following reasons:

- I am prepared to accept the submission that the landlord is obliged to provide and maintain a manufactured home park pad in a reasonable state of repair that complies with housing, health and safety standards required by law. I am further prepared to accept that a landlord cannot contract out of this obligation. Thus, if the tenants asked to locate their manufactured home on the existing size the landlord could not require that the tenants pay the cost of upgrading.
- However, that is not what happened in these cases. In one case the manufactured home proposed by the tenants was larger than the pad and it was necessary to replace the pad to accommodate the proposed manufactured home with its increase size. In other case the tenants wanted to put a double wide home but the pad could only accommodate a single wide.
- I do not accept the submission that a landlord is obliged to provide and maintain a manufactured home pad that meets the requirements of the tenant. I do not accept the submission the Manufactured Home Park Tenancy Act prohibits the parties from entering into their own agreements relating to the installation of a manufactured home pad where the proposed home is larger than the pad presently in place. To make such a determination might significantly prejudice a tenant who wishes to move into the park with his larger manufactured home and is prepared to pay the cost of an additional size pad.
- In the case of GLW and ELW the parties entered into a written agreement in which the tenants agreed to pay for the pad improvements that enabled them to bring in their manufactured home. I see no reason why this agreement should not be binding on the parties. The tenants were not forced to accept this as they had the option not to enter into such an agreement.
- The landlord relied on the obligations set out in this agreement. The tenants' claim is for over \$17,000. If the tenants had not agreed to be responsible to pay for the installation of the new pad the landlord might very well have refused to agree to allow them to move their home onto the property and wait until someone with a smaller manufactured home applied to rent the pad. It is worth noting the agreement between GLW and ELW and the previous owner is dated August 15, 2012. The within application was filed over two years later on October 20, 2014. The previous landlord who entered into the contract

with the tenants has sold the manufactured home park and the representatives of the previous landlord are no longer available. .

- While JB and HB did not sign a contract stating they would be responsible for the cost of the installation of the new pad there was an oral agreement between the representative of the Dealership (representing the tenants) and the landlord that the tenants to that effect. The landlord was not involved in the hiring of the contractors who completed the work and did not pay them or instruct them on what was needed. In my view there is no reason why JB and HB should not be bound by this oral agreement. The Act does not prohibit the parties from entering into their own agreements as to who is responsible for the construction of a pad that is made to meet the specifications of the tenant's newly purchased manufactured home. The landlord is relying on this obligation and would not have entered into this agreement and rented the pad to the tenants had the tenants not agreed to pay the cost of the larger pad.
- The tenants failed to provide sufficient evidence that broke down the costs associated with the construction of the manufactured home site. It may be that part of the cost involved the removal of garbage etc. from the burned manufactured homes and it is arguably that cost might have been an obligation of the landlord that could not have been contracted out of. However, the tenants failed to present sufficient evidence breaking down their costs. As a result no award can be made to the tenants to compensate them for this work as it has not been sufficiently proven. .

In summary I determined the tenants are bound by their agreement voluntarily entered into. **As a result I ordered that the claims brought by both sets of tenants be dismissed without leave to re-apply.**

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*, SBC 2002, c. 77.

Dated: December 10, 2014

Residential Tenancy Branch

