



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dr. M.A. Venier Chiropractic Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC; AAT; RR; FF; O

Introduction

This is the Tenant's Application for Dispute Resolution seeking compensation for damage or loss under the Act, regulation or tenancy agreement; an Order that the Landlord allow access to (or from) the unit or site for the tenant or the tenant's guests; to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlord.

The matter was convened on January 22, 2015, and adjourned. An Interim Decision was provided on January 26, 2015, which was corrected on March 20, 2015, and which should be read in conjunction with this Decision.

Issues to be Decided

- Is the Tenant entitled to compensation in the amount of \$1,000.00 and a rent reduction?
- Should the Landlord be ordered to provide the Tenant with access to the manufactured home?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy began on September 1, 2000.

January 22, 2015

At the outset of the Hearing, the Tenant stated that he wanted reasonable access to his home and for an Order determining the boundaries of the manufactured home site. The Landlord's agent CK stated that the Tenant is "unhappy with" his neighbour because his neighbour had erected a shed, which the Tenant believed was infringing on the Tenant's site boundaries. CK stated that the Tenant's neighbour has subsequently "moved it aside". CK testified that the Tenant was also concerned about a fence, which CK stated has been there since the Tenant moved onto the site. This was the only

testimony that I was able to take and understand at the Hearing on January 22, 2015, due to the issues with the telephones.

1. March 4, 2015

The Tenant testified that his neighbour (WN) has restricted the Tenant's access to his home by installing a shed, and planting cedar trees too close to the Tenant's site. He stated that the trees will eventually get bigger and will impact his sight lines when driving out of his parking spot. The Tenant stated that WN did not consult with him before planting the trees.

The Landlord's agent CK stated that the trees would be removed if they grow too tall.

The Tenant acknowledged that a fence between his site and WN's site was there when the Tenant moved in, but stated that he has been trying for years to get the fence moved because it also impedes his access to his home.

The Tenant stated that his home is in disrepair because he cannot access it in order to repair it. The Tenant testified that the "lot lines" between the two sites are not regulated by the municipality and that the boundaries are not clear.

The Tenant testified that WN infringed on portions of the Tenant's site to plant a raised garden, which caused the siding of his home to rot. The Tenant testified that WN moved his shed, but it was still two feet too close to the Tenant's home.

CK testified that the rotten wood on the bottom of the Tenant's home was all along the home and not just beside WN's garden. CK stated that he does not believe that the wood rotten as a result of WN's raised garden.

The Tenant submitted that the municipality bylaws require a minimum of 1.8 meters as a "set back" from the side of his manufactured home, but there is "nowhere near" that space between his home and the fence.

CK testified that the municipal bylaws pertain to the boundaries of the whole manufactured home park, and not the boundaries of individual sites. The Landlord provided documentary evidence including a copy of an e-mail and notes from a municipal employee to the Landlord confirming the Landlord's position.

The Tenant stated that he got a warning letter from the Landlord on February 7, 2015, advising him that he is not allowed to access the gate between his site and WN's site without being supervised by the Landlord.

CK stated that the Tenant was “difficult” and believed he had the right to enter WN's yard whenever he wants. CK stated that he was doing his best to accommodate both of the tenants.

Analysis

A copy of a “plan” is attached to the tenancy agreement. The tenancy agreement provides that the plan “forms part of this tenancy agreement” and purports to show the “area and boundaries of the manufactured home pad”. I find that the “plan” is not clear with respect to boundaries between the sites. The following information is included on the “plan”:

“Each tenant utilizes the property on their entry side extending to the next mobile home. **Each mobile home owner technically has access to four feet on the side of the mobile home opposite the entry for maintenance requirements.** Typical pads are between 36-40 feet wide”. [reproduced as written, my emphasis added]

The plan does not define what “technically” means, and there are no measurements or points of reference on the “plan”. I do not find the “plan” to be particularly helpful in determining where one site ends and the other begins.

The Tenant seeks an Order that the Landlord provide access to his rental site. Section 22 of the Act provides that a tenant is entitled to: **exclusive possession of the manufactured home site**, subject only to the landlord's right to enter the manufactured home site in accordance with Section 23; and **right to use of the common areas for reasonable and lawful purposes, free from significant interference.**

I find that the Landlord has not provided sufficient clarity with respect to what the site boundaries are. I find that the tenancy agreement provides that the Tenant has access to. In order to give meaning to Section 22 of the Act, I make the following orders:

1. I ORDER that the Landlord hire a professional surveyor, certified by the Province of British Columbia, to prepare a survey of the Tenant's and the WN's sites for the purposes of determining where the boundary line lies between the two sites and where the access area between the two sites exists for the purposes of maintenance.
2. I ORDER that the access area be at least four feet from the side of the Tenant's manufactured home and that the boundary and the common area be clearly marked.
3. I ORDER that the Landlord provide the Tenant and WN with a copy of the surveyor's certificate.
4. I ORDER that the Landlord comply with the above Orders by July 1, 2015.

I encourage the Tenant to cooperate with WN with respect to access for maintenance purposes. I find that the Tenant has not provided sufficient evidence to support a claim for compensation and this portion of his application is dismissed.

The Tenant has been partially successful in his application and I find that he is entitled to recover the cost of the \$50.00 filing fee from the Landlord. The Tenant may deduct this amount from future rent due to the Landlord.

Conclusion

I ORDER that the Landlord hire a professional surveyor, certified by the Province of British Columbia, to prepare a survey of the Tenant's and the WN's sites for the purposes of determining where the boundary line lies between the two sites and where the access area between the two sites exists for the purposes of maintenance.

I ORDER that the access area be at least four feet from the side of the Tenant's manufactured home and that the boundary and the common area be clearly marked.

I ORDER that the Landlord provide the Tenant and WN with a copy of the surveyor's certificate.

I ORDER that the Landlord comply with the above Orders by **July 1, 2015**.

The Tenant's application for compensation and a rent reduction is **dismissed**.

The Tenant may deduct the cost of the filing fee, in the amount of **\$50.00**, from future rent due to the Landlord.

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: March 30, 2015

Residential Tenancy Branch

