



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OLC, MNDC, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to comply with the *Manufactured Home Park Tenancy Act (Act)* or the tenancy agreement; and to recover the filing fee from the Landlord for the cost of filing this Application.

The Tenant stated that sometime in September or October of 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail. The Landlord stated that these documents were received in an envelope post marked September 09, 2014. As the documents were received by the Landlord they were accepted as evidence for these proceedings.

On March 09, 2015 the Landlord submitted numerous documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that these documents were served to the Tenant by registered mail on March 09, 2015. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

With the consent of both parties the Application for Dispute Resolution was amended to reflect the correct address of the rental site.

Issue(s) to be Decided

Is the Tenant entitled to compensation because he is being disturbed by a neighbour's dogs?

Is there a need to issue an Order requiring the Landlord to comply with the Act or the tenancy agreement?

Background and Evidence

The Landlord and the Tenant agree that this is a long term tenancy and that the Tenant is currently required to pay rent of \$380.00 by the first day of each month.

The Tenant is seeking compensation of \$2,400.00 for a breach of his right to the quiet enjoyment of his site has been breached by barking dogs that belong to a neighbor.

The Tenant estimates that when he was home in 2010, 2011, and 2013 he was bothered by the dogs barking on a daily basis; that the dogs would bark about 3-4 times per day; and that the barking would last approximately 2-5 minutes on each occasion.

The Tenant estimates that when he was home in 2012 he was bothered by the dogs barking "a couple of times" per week and that the barking would last approximately 2-5 minutes on each occasion.

The Tenant estimates that when he was home in 2014 he was bothered by the dogs barking 3-4 times each week and that the barking would last approximately 5-10 minutes on each occasion.

The Tenant stated that he has only been home for three weeks in 2015 and he has only heard the dogs bark on two occasions.

The Agent for the Landlord stated that he lived very close to the neighbor with the barking dogs in 2010, 2011, and 2012 and that he moved next door to the Tenant in 2013. He stated that between 2010 and 2014 he only heard the dogs bark for a short period approximately once or twice a week. He stated that dogs have hardly barked in 2015.

The Tenant stated that the neighbor with the barking dogs, who has four dogs, lives approximately 100 yards from his site. The Agent for the Landlord stated that the neighbor with the barking dogs lives approximately 500 yards from the Tenant's site.

The Tenant stated that the Agent for the Landlord is very good friends with the neighbor with the barking dogs.

The Landlord and the Tenant agree that the Tenant has made at least two verbal complaints regarding the dogs and that he has reported his concerns, in writing, on July 15, 2010, August 26, 2010, April 28, 2013, and April 27, 2014. Copies of the written reports were submitted in evidence.

The Agent for the Landlord stated that the neighbor with the barking dogs was given an "infraction notice" every time the Landlord received a written report from the Tenant. The Landlord submitted "infraction notices" regarding noisy or unattended dogs on dated July 26, 2010, April 29, 2013, April 30, 2014, and September 11, 2014.

The Agent for the Landlord stated that he has also discussed the noise complaints with the neighbor with the barking dogs and the neighbor agreed to erect a fence that confines the animals to the rear of the site. He stated that the fence was erected in 2010 and this has helped because the dogs are less likely to see people/dogs walking past the site, which causes them to bark.

The Agent for the Landlord stated that he has received no complaints regarding the dogs from any other tenant of the manufactured home park. The Tenant submitted no evidence from other neighbors or from an independent source that corroborates his testimony regarding the frequency of the disturbances.

The Agent for the Landlord stated that there are many dogs in the manufactured home park and in the neighboring rural area and he speculates that the Tenant may be attributing their barking to the neighbor's dogs.

The Landlord and the Tenant agree that residents of the park are required to sign a pet agreement, which the Tenant submitted in evidence. The Agent for the Landlord stated that this pet agreement was established in 2010. The Tenant stated that he believes the pet agreement was established in 2006, which he based on a notation at the bottom of a document he submitted, which reads: *MHPOABC-14 Tenancy Agreement Family Park (Oct 06-04)*. I note that this notation is not related to the two page pet agreement submitted in evidence.

The Agent for the Landlord stated that the neighbor's dogs were living in the park prior to the establishment of the pet agreement, so those pets were not governed by the new pet agreement. The Tenant stated that he does not believe the neighbor with the barking dogs has the right to have four dogs in the manufactured home park.

Analysis

Section 22 of the *Act* stipulates that a tenant is entitled to quiet enjoyment of the rental site, which includes freedom from unreasonable disturbances. Unreasonable is commonly understood to mean "beyond what can be expected", "clearly inappropriate", or "excessive".

On the basis of the undisputed evidence, I find that an occupant of the manufactured

home park has four dogs that bark on occasion. The issue for me to determine is whether the barking constitutes an unreasonable disturbance.

There is a general legal principle that places the burden of proving a fact on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proof rests with the Tenant.

I find that the Tenant has submitted insufficient evidence to establish that the barking dogs create an unreasonable disturbance. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony regarding the frequency of the barking or that refutes the Agent for the Landlord's testimony regarding the frequency of the barking. If I were to accept the Tenant's testimony, I would conclude that the frequency was unreasonable however if I were to accept the Agent for the Landlord's testimony, I would not conclude the frequency was unreasonable.

Given that the Agent for the Landlord and the Tenant both live in close proximity to the neighbor's dogs, I cannot conclude that one party would have any greater ability to assess the noise over the other.

I fully accept the Tenant's testimony that the barking is disturbing him, which is clearly evidenced by the four letters of complaint he has written. I find it entirely possible, however, that he is simply highly sensitive to the disturbance, which does not establish that the disturbance itself is unreasonable.

In determining that there is insufficient evidence to conclude that the disturbance was unreasonable, I was influenced, to some degree, by the fact that the Agent for the Landlord, who lives nearby, was not disturbed by the noise. While I accept that his tolerance level may be impacted by his friendship with the dog owner, I cannot conclude that his testimony has been untruthful as a result of that friendship.

In determining that there is insufficient evidence to conclude that the disturbance was unreasonable, I was heavily influenced by the Agent for the Landlord's testimony that no other tenant in the manufactured home park has complained to the Landlord about the noise and the Tenant submitted no evidence that other occupants were disturbed. In my view, other occupants would have complained if the noise was unreasonable.

In determining that there is insufficient evidence to conclude that the disturbance was unreasonable, I was influenced, to some degree, by the undisputed evidence that dogs are permitted in the park. Given that dogs are permitted in the park, I find it reasonable for an occupant of the park to expect some amount of barking, providing the frequency is not unreasonable.

In determining this matter I find that the Landlord acted reasonably when he brought the Tenant's concerns to the neighbor with the dogs whenever the Tenant lodged a complaint.

In determining this matter I find that the neighbor with the dogs acted responsibly when he erected a fence in an attempt to reduce the amount the dogs barked.

As the Tenant has failed to establish that the dogs in the manufactured home park have created an unreasonable disturbance, I find that he is not entitled to compensation for a breach of his right to quiet enjoyment of his site.

As the Tenant has failed to establish that the dogs in the manufactured home park have created an unreasonable disturbance, I find there is no need to issue an Order requiring the Landlord to take further action in regards to the dogs.

I note that when determining this dispute I have made no finding on whether or not the neighbor with the barking dogs has the right to have four dogs in the residential complex, as that is not relevant to my decision in regarding the Tenant's claim for compensation. The issue in dispute is whether the dogs are breaching the Tenant's right to quiet enjoyment, not whether the dogs are authorized to be in the complex.

As the Tenant has failed to establish that his Application for Dispute Resolution has merit, I dismiss his application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Tenant's Application for Dispute Resolution has been dismissed in its entirety.

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

Dated: March 31, 2015

Residential Tenancy Branch

