



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FF

Introduction

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

Both parties were given a full opportunity to present evidence and make submissions. The hearing was adjourned as the landlord testified he never received the tenant's evidence even though it was sent by registered mail. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served by mailing, by registered mail to where the landlord carries on business.

The dispute involves the location of the boundaries of two manufactured home pads. For privacy purposes I have identified the manufactured home pad rented by the applicants as Pad A and the adjoining manufactured home pad that is involved in the dispute as Pad B. The renter of Pad B participated in both hearings although he was over 40 minutes late for the second hearing. Pad C runs in a north south direction and it is the neighbouring pad with Pad A. 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 tenant is entitled to an order that the landlord comply with the Act, regulations or tenancy agreement?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy between the applicants and the landlord began on April 1, 2010. The present rent is \$560.06 per month although the tenants submit they are entitled to a discount of \$10 pursuant to an agreement made with the landlord in August of 2014. The tenants rent Pad A which runs in a north south direction. The applicants have a parking spot at the westerly front of their lot. There appears to be a small addition and then there is a green space which the tenant testified was part of their pad.

Pad B originally contained a cabin. In 2007 or 2008 the cabin burned down. The debris was eventually removed. Pad B is located on the westerly front portion adjoining Pad A. Prior to 2014 Pad B had not been rented as a manufactured home pad. There was a fence that ran in an east west direction between Pad A and Pad C.

DR testified that when he rented Pad B from the landlord he was told that the green area behind Pad B was part of the pad which he had rented. A fence ran east-west between Pad A and Pad C separating the green space from Pad B.

The tenants testified that witness #1 DR moved into pad B in August 2014 and has expanded into the green space. They submit DR does not have the legal right to encroach on the green space which is part of the pad which they have rented.

The tenant submits that the portion of green on his westerly side and behind Pad B was originally part of what he rented based on the following:

- a. He was told this was part of what he was renting when he moved in.
- b. He has maintained this area since he moved in 2010 and no one objected until August of 2014 when DR moved in.
- c. During the summer of 2010 the landlord installed an electrical outlet and power pole on the outside of the existing fence to be used by Pad B and Pad C. This included the running of an underground cable from the back of the property in a southerly direction. If the area now claimed by DR was to be included as part of Pad B there would be no need to run such a power line.
- d. The tenant produced a letter from PR dated February 2, 2015 that states the fence that separated Pad A and Pad B running in an east west direction has been there for as long as she has lived in the park (8 years).

- e. The tenant produced a letter from AB stating the fence that separates Pad A and Pad B running in an east west direction has been there for as long as she has lived in the park (31 years).
- f. The tenant produced a letter from FD and DB dated February 2, 2015 stating the tenants of Pad A have always had the use of this area.
- g. In August 2014 the tenants raised concerns that the tenant of Pad B was encroaching on their property. They filed an Application for Dispute Resolution and also arranged to have a meeting with the owner. At that meeting the owner of the rental property and the applicant came up with an agreement that was contained in a letter dated August 14, 2014 which contained the following:
 - The trailer on Pad B took away 5 feet of the land/property that belongs to Pad A. The applicants were to rebuild the fence and \$50 was to be deducted from their rent for labour costs.
 - The fence was to serve as a permanent border line between Pad A and Pad B. Pad A was to have the use and enjoyment of the green space on the north side of the fence.
 - The applicants were to be given a \$10 rent reduction as compensation for the loss of 5 feet.
 - The applicants were to withdraw their Application for Dispute Resolution which they did.
- h. The aerial photograph from Google Earth shows a similar green space to the west side of Pad C and Pad D.

The landlord disputes this evidence. He testified the green portion to the rear of Pad B was always part of the property associated with Pad B. He testified this portion was always part of the property used by the tenants of the cabin. He disputes the tenant's testimony that a power pole was installed near the fence that separated this property from Pad B and that an underground power line was run from the rear of the property to the pole. The landlord submitted the tenant was squatting on the landlord and has demanded the tenant repay over \$36,000 in rent for the use of this land.

The landlord testified the tenant has misunderstood the agreement in the letter of August 14, 2014. The tenant was to build a fence that ran north-south down the side of his trailer giving himself 3 feet of clearance and the remainder of this area was to be used by Pad B.

The landlord relies on a tenancy agreement between the landlord and the tenants of Pad B dated August 14, 2014. That agreement contained an Addendum which sets out his version of what was agreed to (the fence that ran east-west was to be removed, a fence that ran north-south was to be installed by the tenant giving the tenant 3 feet of clearance. The landlord testified two Google Earth maps were made part of this which shows that the fence was to run north south.

Analysis

After carefully considering all of the evidence I determined that evidence of the applicant is to be preferred to that of the landlord and DR for the following reasons:

- a. The applicants had the use of the area in question from 2010 to August 2014. The landlord did not object to the applicants using the property until they rented Pad B to DR.
- b. I accept the testimony of the applicant that the agreement dated August 14, 2014 involved the construction of a fence that was to run east-west and not north-south as alleged by the landlord.
- c. The use of the green space claimed by the applicant is consistent with the green space used by the tenants in Pad C and Pad D.
- d. I accept the evidence presented indicating that a fence running east-west had been present separating Pad B from Pad A for a lengthy period of time. There would be no need for this fence if the green space was linked to Pad B. This is inconsistent with the testimony of the landlord.
- e. The testimony of the applicant about the contents of the agreement in the letter dated August 14, 2014 is consistent with the surrounding evidence. Of significance is the signatory of the landlord and the person who agreed on behalf of the landlord was the father of the landlord. He did not testify at the hearing.

I did not find the testimony of the representative of the landlord to be credible for the following reasons:

- a. The landlord relies on his tenancy agreement dated August 14, 2014 with DR which included an Addendum and two Google Earth maps. The Addendum and Google Maps are marked by the landlord in such a way as to indicate the green space was given to Pad B. This tenancy agreement was not given to the applicants. Little weight can be given to this document as evidence of the agreement between the landlord and the applicant as the applicants had no knowledge of it.
- b. The landlord testified he entered into a tenancy agreement with DR in August 2014 and two Google Earth Maps were part on the tenancy agreement. One of the maps has a 2015 copyright date. The landlord was unable to provide an explanation as to how the 2015 copyright date can be present on a Google Map that was allegedly made in 2014.
- c. The testimony of the landlord that the tenant agreed to build a fence that greatly restricts his use of the property and runs north south is not reasonable or logical. The tenant had already filed an Application for Dispute Resolution. It is not logical that a tenant would cancel that application on the basis of the agreement alleged by the landlord as has not advanced his position in any way.

The evidence of DR is of limited value. He was not present for the first 4 years of the applicant's tenancy. He does not have first hand knowledge of the agreement between the landlord and tenant of August 14, 2014 as that agreement was made between the father of the representative of the landlord and the tenants. The representative of the landlord may have mislead DR as to the boundary line of Pad A and Pad B. That is not for me to decide in this hearing.

Summary:

In summary I determined the agreement of August 14, 2014 is to be enforced. The green space to west side of Pad A and north side of the location of fence that the applicant built is for the use of the applicants only. I determined the applicants are entitled to a \$10 reduction of rent pursuant to the agreement of August 14, 2014.

As a result I made the following orders:

- a. **I ordered that the landlord restore the fence constructed by the tenant after the agreement of August 14, 2014.**

- b. I further ordered that the green space on the west side of Pad A and north side of the location of fence that the applicant built is for the use of the applicants only.**
- c. I further ordered that the monthly rent is \$550.06 per month.**
- d. I ordered the landlord(s) to pay to the tenant the sum of \$20 (overpayment of rent for March and April) plus the sum of \$50 in respect of the filing fee for a total of \$70 such sum may be deducted from future rent.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: April 13, 2015.

Residential Tenancy Branch

