Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and an order regarding interpretation of certain park rules. The hearing was conducted via teleconference and was attended by both tenants; their agent; and both landlords.

At the outset of the hearing the tenants confirmed that while they did receive a letter from the landlord dated May 7, 2015 warning that the landlord may evict them if they did not comply with requirements set out in the same letter they did not receive a 1 Month Notice to End Tenancy for Cause.

The landlord also confirmed that she had not issued a 1 Month Notice to End Tenancy for Cause and her intend in the letter dated May 7, 2015 was not, at that time, to issue such a Notice.

As a 1 Month Notice to End Tenancy for Cause was not issued by the landlord I find the portion of the tenants' Application seeking to cancel such a Notice is moot. I amend the tenants' Application to exclude this matter.

Issue(s) to be Decided

The issues to be decided are whether the tenants are required to move a shed that they have constructed on their site pursuant to park rules; are allowed additional parking spaces pursuant to park rules and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 60, and 65 of the *Manufactured Home Park Tenancy Act (Act).*

Background and Evidence

The parties agree the tenancy began in 1989 and is currently on a month to month basis for the monthly rent of $245.00 due on the 1st of each month. The parties also agree that prior to the current management of this park the tenants had built a shed on their site. Current management has been in place for 3½ years. The tenants submit the shed had been built 3½ years prior to the current management.

The landlord submitted the primary issue was raised when the tenants moved their recreational vehicle onto the site and parked it on the grass near the shed. The landlord stated that when she approached the tenant to move it he indicated that he needed it to be near the shed. At that point the landlord told the tenant that even if that were so the shed was not compliant with the requirements outlined in the park rules and they would need to move it.

Both parties provided a copy of the letter dated May 7, 2015. The letter states, in part:

> "I have spoken with you about parking your motorhome on the front lawn of your home. It is against the rules. It always has been. I revised the rules with Linda they were her rules and I agree with them. I am sending you a copy of them and a copy of her rules from before I took over.
>
> Your shed is also an eyesore and belongs in the back like everyone else. It is against the local bylaws to have it there. It is a public road so Department of Highways and Ministry of Transport has restrictions regarding this as well.
>
> Bylaw enforcement, the Village office, the Regional District, and the building inspector agree with me as well. My request to move your motorhome and shed was reasonable, your response was dismissive, rude, and childish.
>
> Your shed contains flammable items and material it is common sense not to have it there. I am giving you 7 days from the date you receive this letter to have the shed moved to the back. If you do not, I will have it removed from the front at your expense.
>
> Your motorhome is not to be parked in front at all for any reason.
>
> I consider this a willful infraction of the rules that you agreed to. You are responsible for all costs incurred by me to enforce the rules. Consider this official written notice. I will only discuss this issue in writing going forward. Refusal to comply will result in termination of your tenancy in 30 days."

The landlord has provided two separate park rules. While the documents submitted are undated the landlord clarified that one set of rules was written by the previous landlord and the other outlines the current rules. While neither set of rules deals specifically with the placement of sheds on individual sites each set does refer to By-law 97 of the local regional district. I note however, the current rules refer to By-law 97 only in relation to "the building of additions, decks and permanent carports".

By-law 97 is entitled Mobile Home Park By-Law and prescribes regulations to manufactured home parks. Section 11 of the By-law states that no building or structure can be erected within a buffer area with a minimum setback abutting all exterior site boundaries of 25 feet for any boundary that is not abutting a provincial highway, where the setback must be 35 feet.

The landlord submits that the tenants' shed does not comply with this requirement, however she has provided no measurements or any order from the regional district noting that the shed does not comply with By-law 97. The tenants submit that they have measured the location of the shed as per the instructions of the local bylaw officer and they are compliant with the By-law. The tenants have also not provided any confirmation from the regional district that they are in compliance with the By-law.

The parties agree the tenants have moved their recreational vehicle and that is no longer an issue. However, the landlord still wants the tenants to move their shed. The tenants do not want to do so.

The tenants also seek clarity on where guests should park should their parking spaces be filled and they require additional parking. The parties agree there is a visitor parking allocation for the park however, it only allows a small number of vehicles.

The current park rules relating to parking, as submitted by the landlord, are almost identical to the previous park rules which outline specific rules of where and what can be parked in the manufactured home park. I note that the rules require no parking on lawns; a maximum of 2 vehicles per space and anything other than that must be parked in stored in the storage area provided.

There is no mention in the park rules about where tenants' guests should park if the tenant's spaces are filled. Neither party provided a copy of a tenancy agreement that might outline what is included in the rent, such as any other parking availability.

Analysis

Section 32 or the Act states that a landlord may establish, change or repeal rules for governing the operation of the manufactured home park. These rules must not be inconsistent with the *Act* or the regulations or any other enactment that applies to a manufactured home park. The section goes on to say that rules established in accordance with this section apply in the manufactured home park and if a park rule established under this section is inconsistent or conflicts with a term in a tenancy agreement that was entered into before the rule was established, the park rule prevails to the extent of the inconsistency or conflict.

In the case before me the current park rules make no reference to the locations that tenants may or may not place a shed. While the current park rules make reference to the requirements set forth in Bylaw 97 of the local regional district the reference is specific only to additions; decks and permanent carports. As such, I find the landlord cannot require the tenants to move their current shed.

Estoppel is a legal doctrine that prevents somebody from stating a position inconsistent with one previously stated, especially when the earlier representation has been relied upon by others.

Even if the park rules made reference to Bylaw 97 in relation to sheds or if there was a specific rule regarding shed location in the park rules themselves, I find the landlord is estopped from requiring the tenants to move their shed because she and the previous landlord have failed to take any action or provide any warnings to the tenants that the shed was incompliant since the shed was built 7 years ago.

As the respective landlords did not identify a problem with the location of the shed and the current landlord only raised the issue as an ancillary issue to the parking of the tenants' recreational vehicle, I find the landlord is now be barred from taking any action against the tenants for the placement of the shed.

In relation to the tenant's request for clarity on the parking of guest vehicles, I find the park rules only address where the tenant and the guests they are responsible for cannot park. There is nothing in the evidence before me that requires the landlord to provide any guest parking once their parking that is compliant with the park rules has been completely used.

Further based on the evidence before me, I find that none of the park rules related to parking is inconsistent with the *Act*, regulation or tenancy agreement and therefore enforceable.

As such, I decline to make any orders that would require the landlord to provide any additional parking or allow the tenants to disregard any of the park rules pertaining to parking.

Conclusion

Based on the above, I order that the landlord may not require the tenants move their shed or use the tenants' failure to move the shed as a cause to end the tenancy, unless an order is issued by an appropriate municipal authourity to do so.

I find the tenants are entitled to monetary compensation pursuant to Section 60 in the amount of **$25.00** comprised of ½ of the $50.00 fee paid by the tenants for this application, as they were only partially successful in their Application. I order the tenants may deduct this amount from a future rent payment, pursuant to Section 65(2) of the *Act.*

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: July 08, 2015

Residential Tenancy Branch