



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CEDAR GROVE MOBILE HOME PARK
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O OPC, ET, FF

Introduction

The landlord applies for an order that the tenant comply with park rules regarding motor homes in the park.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the order is warranted?

Background and Evidence

The manufactured home site rented to the tenants is one of fifty five in a conventional manufactured home park. The tenancy began in June 2003. The current monthly rent is \$522.00.

Since approximately the summer of 2014, the tenants have been in the habit of bringing their motorhome into the park and parking it in one of the two offstreet parking spots on their manufactured home site.

The landlord says bringing the vehicle into the park without permission is a violation of park rules.

The tenants say that they have been bringing a large vehicle, first a milk truck and the motorhome into the park since they moved in and so should continue to have that right.

The tenants argue that the park rule regarding motorhomes is ambiguous and not in accordance with the *Manufactured Home Park Tenancy Act* (the “Act”) and Regulation and so is of no effect.

The written tenancy agreement specifically excludes “RV Parking” as service or facility included in rent.

The tenants argue that there was a three page addendum to their tenancy agreement which might have permitted motorhome parking. Neither side could produce the addendum. Landlord's counsel opined that it might simply have been a copy of the park rules.

The park rule as it relates to motorhomes states:

20. All tenants and guests must comply too (*sic*) all signs and rules in the park. VEHICLES: NO CAMPERS, CAMPING TRAILORS (*sic*) NO COMMERCIAL VEHICLES, MOTORHOMES, MOTORCYLES ARE NOT PERMITTED PARKING IN THE PARK (inquire) COMMERCIAL VEHICLES CAN DELIVER OR PICK UP ONLY WHEN IN THE PARK.

* * *

22. A Tenant may also be required to **pay a fee** for something that is not included in the tenancy Agreement such as fees for additional RV parking to be paid by the Month.

23. To all Tenants that have RV'S in storage for **your Convenience only**. How it works here When you bring your **RV out of storage** for the first time you must **phone Management first** if no answer please leave a message **what time, date and unit number** before you can bring your **RV into the park**. Then you have **48 hours** to have your **RV** on your site to get it ready for your trip. When you come back you need to **phone first** that you're coming into the park and then you have **24 hours only** thereafter every time you bring the **RV** into the park.

24. LANDLORD/OWNER RESERVES THE RIGHT TO CANCEL THIS CONVENIENCE OF BRINGING RV'S INTO THE PARK. Remember you must please phone every time RV comes into the park.

(bold type in original)

The landlord does not offer a facility for storing motorhomes or other recreational vehicles. There is a private facility located outside the park.

The tenants have received a copy of the park rules at least by March 23, 2015, the date of a settlement conference conducted by the Provincial Court.

Analysis

Section 32 of the *Act* provides:

Park rules

32 (1) In accordance with the regulations, a park committee, or, if there is no park committee, the landlord may establish, change or repeal rules for governing the operation of the manufactured home park.

(2) Rules referred to in subsection (1) must not be inconsistent with this Act or the regulations or any other enactment that applies to a manufactured home park.

(3) Rules established in accordance with this section apply in the manufactured home park of the park committee or landlord, as applicable.

(4) 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.

There is no park committee in this park.

Section 32, above, states that it is not a requirement that a landlord has a tenant's consent before imposing a rule. It states that a landlord may establish or change or remove a rule after a tenancy starts. Subsection (4) states that where a park rule conflicts with a term in a tenancy agreement, the park rule prevails.

It follows that despite whether the tenants' tenancy agreement addendum might have provided for motorhome parking, the park rule would trump that term of the tenancy agreement.

In such a case, the idea of "grandfathering" whereby a use of the manufactured home site that pre-exists its regulation or prohibition is allowed to continue, has no place. The *Act* specifically states that the park rules override any pre-existing term in a tenancy agreement.

The fact that the landlord in this case may have chosen to "grandfather" tenants who in its opinion had been parking their "fifth wheel" trailers on their sites from the days before the park rules, is not fact the tenants can rely on this case. Under the terms of s. 32 above, the park rule prohibiting trailers would apply to those other tenants. It was a choice made by the landlord not to enforce the park rules against them.

However, a landlord's power to make park rules is limited by the Manufactured Home Park Regulation. It's relevant portions state:

Part 4 — Park Rules

Disclosure

29 (1) Prior to a person's entering into a tenancy agreement with a landlord, the landlord must disclose in writing to that person all rules in effect at the time of his or her entering into the tenancy agreement.

(2) Subsequent to a tenant's entering into a tenancy agreement with a landlord, the landlord must give notice in writing to that tenant of any rule at least two weeks before the rule becomes effective.

Making rules

30 (1) The park committee or, if there is no park committee, the landlord, may establish, change or repeal a rule if it is reasonable in the circumstances and if the rule has one of the following effects:

- (a) it promotes the convenience or safety of the tenants;
- (b) it protects and preserves the condition of the manufactured home park or the landlord's property;
- (c) it regulates access to or fairly distributes a service or facility;
- (d) it regulates pets in common areas.

(2) If there is a park committee, the rules must be established, changed or repealed according to the procedure set out in sections 22 [*park committee decisions*] and 23 [*vote by landlord and tenants*].

(3) A rule established, or the effect of a change or repeal of a rule changed or repealed, pursuant to subsection (1) is enforceable against a tenant only if

- (a) the rule applies to all tenants in a fair manner,
- (b) the rule is clear enough that a reasonable tenant can understand how to comply with the rule,
- (c) notice of the rule is given to the tenant in accordance with section 29 [*disclosure*], and
- (d) the rule does not change a material term of the tenancy agreement.

Despite the able argument made by counsel for the tenants, I find that the rule prohibiting motorhomes in the park complies with s.30(1) of the Regulation. It is a reasonable rule intended to promote convenience and safety by ensuring that available on site parking is reserved for vehicles and not occupied by or used as storage for only occasionally used campers, trailers, motorhomes and the like. The rule mitigates or reduces the likelihood of people parking vehicles on the travelled roadway in the park.

It may be the true that the tenants are awaiting car repairs and so are using their motorhome as daily transportation. That may be a very good reason for the landlord to grant some relaxation from the rule but it does not detract from the validity of the rule or its enforceability.

I find that the rule is clear enough to be understood by a reasonable tenant. The sign posted in the park reading "no unlicensed vehicles, RV's or campers" may be open to

various interpretations but it is the park rules that govern and rule 20 says motorhomes are not permitted parking in the park.

Counsel for the tenants referred to “material terms” in her argument. I find that the prohibition from parking motorhomes in the park does not change any material term proved to be contained in the tenancy agreement.

Conclusion

The tenants are in violation of the park rules by parking a motorhome in the park. I grant the landlord an order directing the tenants to remove the motorhome from the park within 48 hours after service of the order on either of them. Failure to comply with this order within 30 days will entitle the landlord to end the tenancy pursuant to s.40(1)(k) 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: August 18, 2015

Residential Tenancy Branch

