



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brock Estates Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OLC, PSF

Introduction

This hearing was scheduled in response to the tenant's application in which a total of eight tenants have joined their applications. The tenants have each applied requesting an Order the landlord comply with the Act and that the landlord provide a service or facility required by law and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord confirmed receipt of the hearing documents and tenants' evidence including coloured photographs, on July 21, 2015. The landlord confirmed that they understood that the tenant present at the hearing was representing the seven other parties who have joined their applications to be heard at the same time. The landlord confirmed receipt of the *Tenant's Request to Join Applications for Dispute Resolution* that was signed on July 21, 2015 and included the names of the eight applicants.

The landlord did not make a written submission.

Issue(s) to be Decided

Must the landlord be Ordered to comply with the Act?

Must the landlord be Ordered to provide services or facilities required by law?

Background and Evidence

The tenants have applied requesting the landlord comply with the Act by rescinding the written direction issued in April 2015 that all Recreational Vehicles (RV's) in the park be removed, with no exception.

There was no dispute that the tenancies for the eight applicants have been long-term, commencing as early as 1973 and prior to 2004.

The tenant confirmed that at the time the parties applied for dispute resolution a number of documents were obtained with the cooperation of the landlord. The tenant submitted these documents as evidence; which included copies of some tenancy agreements and copies of different versions of Rules and Regulations for the park.

One set of Rules was dated 1978; there was no reference to RV parking on that document. A set of Rules and Regulations signed by one of the tenants in 1995 and another tenant in 2000 did not reference RV parking.

A set of Rules and Regulations signed by one tenant in 2004 and another in 2005 included clause five, which provided, in part:

*"Recreation vehicles must be parked in space designated by management.
Parking of unlicensed cars or trucks other than RV's IS NOT allowed...."*

(Reproduced as written)

A variation of the Rules and Regulations signed in 2004 and 2005 was issued in 2007. Clause five of this document was amended to read, in part:

"Recreation vehicles must be parked in space designated by management...effective March, 2007 new tenants will not be allowed to bring their Recreational Vehicle, example; motor home, 5th wheel trailer, camper, boat and trailer into the (Park)."

(Reproduced as written)

The tenant said that when they purchased the home the ability to keep their RV on the property was critical to the tenancy. Some of the tenants leave for the winter; taking their RV's south. Tenants keep their RV's on their sites; either on blocks or designated paved areas, or in a compound that has been provided by the landlord. All applicants have applied for dispute resolution as the terms allowing parking of their RV's is critical to them. The applicants cannot afford to park their vehicles elsewhere.

The tenant said the first time she saw the Rules and Regulations that had been amended in 2007 was in April 2015 when preparing for this hearing. The landlord said that the manager at the time would have had homeowners sign, confirming receipt of

the Rules and Regulations amended in 2007. The current manager said he had not located evidence that homeowners had signed, confirming receipt of the Rules and Regulations.

The landlord said that the Rules and Regulations include a term which states:

“Management reserves the right to relax, waive or amend any of these rules and regulations if the need arises.”

The landlord stated that they have not considered the *Manufactured Home Park Tenancy Act* or the *Manufactured Home Park Regulation* as they believe the term of the park Rules and Regulations provide the landlord with the authority to make changes to the Rules.

The landlord confirmed that tenants keep RV's on their sites and that some RV's and boats are kept in a small compound on the park property. There was no dispute that parking of RV's has always been allowed for these tenants.

The tenant supplied multiple coloured photographs as evidence. These were not referenced during the hearing. The parties were told I would be considering all the submissions.

Analysis

I have considered the evidence before me and the applicable legislation and the Regulation.

There was no dispute that all tenants have been provided with RV parking since the start of the tenancies.

The Act defines service or facility as:

***"service or facility"** includes any of the following that are provided or agreed to be provided by a landlord to the tenant of a manufactured home site:*

- (a) water, sewerage, electricity, lighting, roadway and other facilities;*
- (b) utilities and related services;*
- (c) garbage facilities and related services;*
- (d) laundry facilities;*
- (e) **parking and storage areas;***
- (f) recreation facilities*

(Emphasis added)

Therefore, I find that the tenants have been provided with RV parking since the start of their tenancies and that parking is a facility agreed to by the landlord.

Section 14(3)(b) of the Act provides a landlord with the opportunity to withdraw or restrict a service or facility in accordance with section 21 of the Act.

Section 21 references the termination of a service or facility and provides:

Terminating or restricting services or facilities

- 21** (1) *A landlord must not terminate or restrict a service or facility if*
- (a) the service or facility is essential to the tenant's use of the manufactured home site as a site for a manufactured home, or*
 - (b) providing the service or facility is a material term of the tenancy agreement.*
- (2) *A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord*
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and*
 - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.*

If the tenant can purchase a reasonable substitute for the service or facility, a landlord may terminate or restrict a service or facility by giving 30 days' written notice, in the approved form, of the termination or restriction. The landlord must reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Residential Tenancy Branch (RTB) policy suggests that an essential facility is one which is necessary, indispensable or fundamental. If the loss of the facility would make it impossible or impractical for the tenant to use the site, then the facility would be found to be essential. RTB policy suggests that a material term of a tenancy is a term that both parties agree is so important that even the most trivial breach of that term gives the other party the right to end the tenancy.

In order to remove the RV parking the landlord is required to issue proper Notice, in the approved form; but may only do so if the parking is not an essential facility or a material term of the tenancy. If notice is appropriate the landlord must then reduce the rent equivalent to the reduction in value of the tenancy agreement. This means that the site rent would be reduced by the sum that must be paid by each tenant to park their RV elsewhere; taking into account the real cost of parking their RV.

As proper notice has not been issued I have not made a finding as to whether parking is essential or material to the tenancies. These factors may come into dispute if the landlord issues notice terminating the parking.

In reaching this conclusion I took into account the landlord's submission that the Rules and Regulations provided the landlord with the authority to make changes to the terms, as they see fit. Section 32 of the Act allows a landlord to change or repeal rules. Rules are set in accordance with section 30 of the Regulation, which provides:

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.*

(Emphasis added)

Section 29(2) of the Regulation requires a landlord to give notice in writing to existing tenants of any rule at least two weeks before the rule becomes effective.

The landlords' right to change the rules does not relieve the landlord from the requirements of the Regulation and Act.

I note that the Rules and Regulations issued in 2007 affects new tenants, not tenants who lived in the park prior to March 1, 2007. I have made any determination on the validity of those Rules.

Therefore, I find that the landlord must comply with the Act and Regulation if the landlord wishes to remove the RV parking. The requirements are set out above. As proper notice terminating the parking facility has not been issued in accordance with the legislation I find that all applicants must continue to receive parking for their RV's and any other parking that has been provided.

As the application has merit I find that lead applicant is entitled to deduct the \$50.00 filing fee from next months' rent due and that the other seven applicants may deduct \$25.00 each from the next month's rent due.

Conclusion

These tenancies include parking as a facility; including RV parking.

The landlord is Ordered to comply with the Act. Parking may not be terminated unless it is done so in compliance with the legislation.

The applicants are entitled to filing fee costs.

This decision is final and binding and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 55(1) of the *Manufactured Home Park Tenancy Act*.

Dated: September 25, 2015

Residential Tenancy Branch

