Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Parkridge Lifestyle Communities Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, MNDC, OLC, RP, FF

Introduction

This hearing dealt with an application by the tenant for orders setting aside an illegal rent increase; granting him a monetary order; compelling the landlord to comply with the Act, regulation or tenancy agreement; and compelling the landlord to make repairs.

The hearing commenced December 2, 2015. Both parties appeared and there were no issues with the service of evidence identified. The parties were not able to finish their testimony within the time allotted for the hearing and it was continued on January 7 at 1:00 pm, a date and time convenient to all the parties.

Both parties filed some evidence a few days before the continuation date. The landlord's advocate submitted a letter and diagram seven days before the continuation date. The tenants filed additional evidence on January 5, 2016. They also mailed the evidence to the landlord on the same date. As of the date of the hearing neither the landlord nor I had received this evidence. The late evidence included a diagram of the park layout.

Rule 2.5 provides that, to the extent possible, when an applicant submits their application for dispute resolution to the Residential Tenancy Branch they must also submit copies of all other documentary and digital evidence to be relied on at the hearing. Rule 3.17 provides that late evidence may or may not be considered at the hearing depending on whether the party can show it was not available at the time that their application was made or when they served and submitted their evidence.

The tenant's application included a request that they be provided with a legal description of the manufactured home site pursuant to section 12(1) of the *Manufactured Home Park Regulation*. They filed copies of their e-mails to the landlord asking for a plan, copies of a sketch provide by the landlord, and a diagram of the park layout as part of their original submission. Between the first and second days of the hearing the landlord's advocate met with the tenants at their home and measured up the

site. The advocate prepared a new site plan from those measurements and sent it to the tenants. This was the evidence filed by the landlord seven days before the hearing. The tenants did not like the plan. They explained that at that point they remembered seeing a plan attached to the listing documents. They found the plan and submitted it, together with copies of addendums to the original contract of purchase and sale. These are the documents that were served and filed two days before the continuation date of the hearing.

The tenants filed their application for dispute resolution on September 30. It was their responsibility to locate, serve and file all of the relevant evidence at that time. Since the application included a request for a site plan any site plans already in existence were clearly relevant. These documents were available when the application was submitted and there is no compelling reason for the tenant's failure to submit these documents at that time. Accordingly, I refused to accept the tenant's late evidence.

Issue(s) to be Decided

- Should an order be made compelling the landlord to comply with the Act, regulation or tenancy agreement be made and, if so, on what terms?
- Should a repair order be made and, if so, on what terms?
- Should a monetary order be granted to the tenant and, if so, in what amount?

Background and Evidence

Background

This tenancy commenced June 5, 2014, when the tenants bought the manufactured home and the tenancy agreement was assigned to them. The tenants filed a copy of their application for tenancy and a copy of the cover page of the Park Rules and Regulations in their evidence but did not file copies of the real estate listing or their contract of purchase and sale. The landlord filed a copy of the entire Park Rules and Regulation. No one filed a copy of the tenancy agreement. The landlord's witness testified that they sent a tenancy agreement to the tenants for signature and they never returned it. The tenants say they were never sent a tenancy agreement.

Rent Increase and Claim for Interest

A great deal of time and testimony was devoted to the tenant's claim for interest to be paid on an overpayment of rent. The tenants say that they paid $2.00 per month too much for seven months. Eventually the landlord repaid the tenants the $14.00 overpayment. The tenants felt they should also be paid interest on the overpayment. The tenants did not provide a calculation of the interest claimed with their application. When asked for more specific information in the hearing the tenants said they could get .75% at their bank. The landlord provided a calculation done on the CRA website

based on an annual interest rate of 3%. The calculation showed interest accrued in the amount of $.22. The landlord's advocate paid the tenants $.25 on December 12 and the tenants stated they were satisfied with this payment.

Parking and Site Plan

This home was originally occupied by the founder of this park. He built a large garage/office building at right angles to and a little behind the manufactured home. At one corner only six feet separate the garage and the manufactured home. There is a large shared driveway, punctuated by a fairly large stone planter, which services both the tenants' home and the garage.

The cover page of the Park Rules and Regulations submitted by the tenants with the application for dispute resolution shows a park plan. This diagram shows the tenants' site and a separate site for the garage. The landlord's evidence is that this plan is an illustration only and does not represent a surveyed plan. The tenants testified that when they bought this home the landlord promised to separate the two lots.

The tenants testified that before they agreed to buy the home they had to be satisfied with the parking arrangements. The male tenant testified that they had a conversation with the former park manager and they agreed that an area approximately 25 feet from the back of the stone planter to the garage would be set aside as the tenant's parking. In his testimony the tenant used the peak of the sunroom roof as the reference point; it was the landlord who said this was about 25 feet. The tenants' testimony is that they only agreed to buy this home after they were satisfied with the arrangements for parking.

The tenants acknowledge that the agreement was not reduced to writing. They argue that the landlord is bound by the undertakings made by its' employees.

The tenants also testified that they were asking for measurements of the site before they agreed to buy this home but never received them. They said that because of personal circumstances they went ahead with their purchase even though they did not have the measurements.

The tenants' application for tenancy was dated March 17, 2014. The application discloses that they had two motor vehicles. The application specifically states:

> "I/We acknowledge having read the 'Rules and Regulations' and understand that these rules and regulation will be attached to and will form part of my Tenancy Agreement that I/we may subsequently enter into with the owner(s) or landlord(s) of this Manufactured Home Community."

The Park Rules and Regulations provide:

> "13.a) A maximum of two(2) operative and insured vehicles may be parked end to end, space permitting, in the driveway and carport but should not be over hanging on the street or landscaped areas of the home site."

There has been an ongoing dispute about the use of the shared driveway which relates back to the issue of the actual dimensions of the site.

The tenants say that not lonely did the previous park manager agree that 25 feet would be for their exclusive use so did the Regional Manager in a subsequent conversation. However, that was not her testimony. She testified that in an effort to resolve the dispute she offered to designate a parking space in the dispute area for these tenants only but that this parking spot would not be provide to any future assignee of the tenancy agreement.

One of the tenants' daughters lives in the home with them. Between the three residents they have a total of two vehicles. The tenants testified that another daughter has a medical condition that will soon confine her to a wheel chair. They anticipate her moving into their home at some time in the future. Whether she lives with them or not they want to have the necessary facilities to allow her to visit. This includes the construction of a deck and ramp, and parking space for her motor vehicle.

The tenants submitted an application for approval for the construction of a deck and future ramp. The landlord's approval was accompanied by a hand drawn sketch of the site. The tenants did not like the sketch; in particular they did not like the area set out for parking. This was on of the circumstances that led the tenants to file this application for dispute resolution.

In an effort to settle the dispute the landlord's advocate went to the rental unit on December 12, 2015, between the first and second dates of this hearing. The advocate and the male tenant measured out the site. The male tenant held one end of the tape and the advocate read out the marking to the male tenant. According to the advocate they used the front corner of the home as the fixed point. The advocate prepared a drawing based on those measurements and sent it to the tenants by regular mail and e-mail on December 29. The advocate testified that he thought they had agreed on the measurements on December 12 and that his drawing reflected their agreement.

The advocate testified that as they measured he put stakes into the ground to set out the site boundaries and the tenant never voiced any concern or objections.

At the hearing on January 7 the tenants said they were not satisfied with the drawing presented by the advocate. The male tenant said that as he never saw the end of the tape measure that the advocate was holding he cannot say that the numbers called out by the advocate on December 12 were accurate. The male tenant testified that at the time he did not check any of the advocate's measurements because he trusted him. It was only after he saw the advocate's sketch that he objected to it. When asked for specifics of errors, the male tenant said that the measurement of the distance across the front of the lot was inaccurate.

The tenants never provided an alternate scale drawing of the site.

According to the landlord there is a portion of the driveway between the edge of the front yard of the home and the stone planted, 18 feet by 25 feet in size that is the designated parking area for this site. The tenants argue that actually the space is smaller than that because the planter wall is not straight but curves outward, and is too small to accommodate two motor vehicles.

The landlord's position is that although there is no documentation to show that this agreement exists they are prepared to accommodate the tenants by agreeing that a nine foot wide parking space will be designated for the use of the tenants during their tenancy. Whenever the home is sold the new tenants will be entitled to the tow parking spaces designated in the Park Rules and Regulation.

In addition the landlords are prepared to paint outlines of this third parking spot and add signage to that area and the parking space at the front of the site making it clear that those areas are private parking only.

The tenants argue that the landlord's proposal is unacceptable for a number of reasons.

First of all, the plan they have prepared and had approved for the new deck is predicated on the tenants having exclusive possession of 25 feet of the dispute driveway and the ramp sloping towards the rear of the home. The tenants argue that if the landlord's measurements are accepted they will have to walk on the grass to access their home and this will reduce its' value.

The tenants drive a crew cab pick-up truck with a full size box. They argue that this vehicle will not fit into the parking space proposed by the landlord. The advocate testified that he drives the exact same truck and it fits in a standard sized spot, which is

nine feet wide. He also stated that the landlord does not care about the length of the parking spot; only the width.

The landlord's position is that if 25 feet of the parking area is set aside for the tenants there will not be enough room for them to get their vehicles in and out of the garage.

The advocate testified that this park was developed in 1975 and the requirement to provide a sketch came into effect in 1996. The park has never been surveyed. The landlord filed a letter from a surveyor that stated:

> "If no original layout plan exits or it is not of sufficient quality, the surveyor would not be able to re-establish the original intended boundaries of each site. In this case the surveyor would simply take instructions from the owner as to where to place boundaries and provide a plan to that effect."

Drainage

Both parties agree that the drainage on the site needs to be repaired. The landlord's maintenance technician, the landlord's regional manager and the tenant all expressed their opinions about what should be done. Although all of these witnesses have some practical experience, none are specifically trained or qualified.

Electrical Cable

The tenants testified that there is an electrical cable that runs under the manufactured home and they are not sure whether it is "live" or not. They are concerned that this presents a safety hazard.

The landlord's maintenance person said that they investigated the situation in response to the tenants' complaints. They observed some black plastic conduit in the ground and pulled it out. It was only about twelve inches long and was empty. He thought this may be the electrical wire the tenants were referencing.

The landlord had an electrician do some work at the site on October 1. They say the electrician had a quick look under the home but acknowledged that it was not a thorough examination.

Landscaping

Rule 10.e) of the Park Rules and Regulations provides:

> "Any fencing, plants, shrubs or trees that are present now or are added in the future are and remain the responsibility of the Resident and must be maintained by the Resident at the Resident's cost, in good condition. Removing or adding to the fencing, shrubs and trees on the site requires the prior written permission of the Landlord. Any tree pruning by the Resident must first be approved by the

> Landlord. The Landlord reserved the right to remove or prune any tree or shrub on the Site or in the Community.

When the tenants moved into this home the space between the front of the home and the street was filled with shrubs. The tenants cut the shrubs to the ground but did not dig out the roots. Their evidence is that the previous park manager had given them permission to cut the shrubs.

The landlord removed a large tree at the corner of the site and had a stump grinder remove the stump.

The tenant's position is that all the roots at the front of their home and under their home are from the tree and clean-up is the landlord's responsibility.

Analysis

Burden of Proof

On any application the onus is on the applicant to prove their claim on a balance of probabilities.

Parking and Site Plan

In their written and oral testimony the tenants never challenged the boundaries on the site of the site that is demarcated by a well-established hedge or the front of the site that is demarcated by the road. Although the occasionally suggested that the garage is part of their site their testimony is clear that they did not think their purchase price included the garage. For example, a great deal of their evidence related to their concern that the lights on the garage may be on their hydro meter, a concern that was resolved before this hearing.

Section 12(1) of the *Regulation* states that:

> "A landlord must ensure that a tenancy agreement contains . . .
>
> > (b) the boundaries of the manufactured home site measured from a fixed point of reference."

The *Regulation* does not exempt parks that were created before the *Regulation* came into effect nor does it require that the plan be a formal survey by a qualified surveyor.

When a landlord does not comply with the legislation or the tenancy agreement the *Manufactured Home Park Tenancy Act* allows an arbitrator to comply (s. 55(3)). The only order I could make is that the landlord provide the tenants with a plan measured from a fixed point of reference, which it has now done. Other than the tenants' protestations and suspicions there is no evidence, such as an alternate plan measured

and prepared by the tenants that shows different measurements, on which I could conclude that the most recent plan prepared by the advocate is inaccurate.

The tenant's evidence that the previous park manager made an agreement with them that directly contradicted the terms of the Park Rules and Regulations that form part of their tenancy agreement. There is nothing in writing or any other witness that corroborates the tenants' testimony. In the end, there is not enough evidence to conclude that the landlord agreed to vary the tenancy agreement by designating 25 feet of the shared driveway for the exclusive use of the tenants.

However, the landlord has agreed to provide the tenants with additional parking and to take steps to designate that parking as being for their exclusive use.

With regard to the tenants' objections to the landlord's proposal I note as follows:

- Looking at the photographs and drawings submitted into evidence there appears to be ample room to build the stairs and ramp at the front and/or side of the proposed deck. The tenants may have to add a short walkway from the new deck to the undisputed parking area but this will be a small percentage of the overall cost of the project.
- Nine feet is the standard width of a parking space in Canada.
- As explained to the tenants in the hearing they face no legal consequences if, when they sell their home, they identify that the tenancy agreement only allows two parking spaces, the same number of parking spaces available on every other site in this park.

Although nine feet is that standard width of a parking spot in Canada I am of the view that a slightly larger space will minimize future conflict.

I order that the landlord designate a third parking spot that is eleven feet wide and three feet longer than the actual length of the tenants' truck. The designated space is to be demarcated by a painted line that is refreshed by the landlord as required throughout this tenancy. Further, the landlord is ordered to post and maintain signage that identifies the tenants' parking areas as being private parking.

This order will remain in effect for as long as the tenants own and reside at this manufactured home. The order will cease to have effect when the tenancy agreement is assigned to a purchaser or when the tenancy is ended pursuant to the *Act*, whichever first occurs.

Drainage
As set out earlier, all of the witnesses have some practical experience but none are specifically trained or qualified. Further, it was quite apparent that the tenants are unwilling to accept any proposal made by the landlords.

I order the landlord to retain a licenced landscaper to examine the site and prepare the renovation plan for drainage on this site. The actual work may be done by the landscaper or any other service or person qualified to do a particular task. For example, if the work to be done is merely shovelling work the landlord does not have to hire a licenced landscaper to perform this task. The landlord must provide the tenants with a copy of the renovation plan before the work starts. If the renovations are not completed by June 1 the tenants may apply for a further repair order and/or an order reducing the rent.

Electrical Cable
It is the landlord's responsibility to ensure the safety of any services provided on a site.

I order the landlord to have a licenced electrician inspect the crawl space under the manufactured home. If the electrician finds electrical cable, "live" or not, under the home the electrician must take whatever steps are required to bring the situation into compliance with the applicable building code. The electrician must provide the landlord with a report stating the steps taken and confirming that the work complies with code. The landlord must provide the tenants with a copy of this report. If the renovations are not completed by June 1 the tenants may apply for a further repair order and/or an order reducing the rent.

Landscaping
The parties' respective responsibilities for yard maintenance is set out in Rule 10,e) of the Park Rules and Regulations. Clean-up after the shrub removal including root removal, soil replacement and installation of new plant material, including grass, is the tenants' responsibility. Clean- up after the tree removal including root removal, soil replacement and installation of new plant material, including grass, is the landlord's responsibility.

The shrubs that were cut down by the tenants have a substantial root structure so, clearly, not all of the roots in the ground are just from the tree. It is not possible for me to determine from the photographs the proportion of shrub roots to tree roots.

I order that the landlord retain a licenced landscaper or licenced arborist to remove all of the roots from the front of the home and under the home. The cost is to be shared equally between the landlord and the tenants. The work will not start until the tenants have deposited 25% of the estimated cost, as provided by the licenced landscaper or licenced arborist in advance, with the landscaper or arborist unless the parties agree otherwise.

Filing Fee

The tenants have only been partially successful on this application. In addition, a great deal of public time and resources were devoted to an issue that was settled with a payment of $.25. Accordingly, I order that the tenants are only entitled to a partial reimbursement from the landlord of the fee they paid to file this application. **I order** that the tenants are entitled to reimbursement of the sum of $25.00. Pursuant to section 65 that amount may be deducted from the next rent payment due to the landlord.

Conclusion

A variety of repair orders have been made. All other applications have been dismissed or were resolved before the end of the hearing.

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: January 19, 2016

Residential Tenancy Branch