



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHILLIWACK RIVER ESTATES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O, FF

Introduction

This hearing dealt with the tenants' application pursuant to the Manufactured Home Park *Tenancy Act* (the "Act") for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 55;
- authorization to recover the filing fee for this application from the landlord pursuant to section 65.

Both parties attended the hearing by conference call and gave affirmed testimony. The landlord confirmed receipt of the tenant's submitted documentary evidence. The landlord did not submit any documentary evidence. As both parties have attended and have confirmed receipt of the submitted documentary evidence, I am satisfied that both parties have been properly served as per section 88 and 89 of the Act.

Preliminary Matters

On November 22, 2015 the tenants made an application for an order for the landlord to comply with the Act, regulation or tenancy agreement and recovery of the filing fee. The tenants' written details stated that they are seeking a reduction in pad rent for the loss of quiet enjoyment. It was clarified with all parties that the tenants were seeking a monetary order for the loss of quiet enjoyment. The tenants have not provided any details of the monetary amount.

Issue(s) to be Decided

Are the tenants entitled to an order to reduce pad rent for the loss of quiet enjoyment?
Are the tenants entitled to a monetary order to recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings are set out below.

The tenants are seeking a monetary claim for the loss of quiet enjoyment and have provided written details of their claim which states in part:

On August 31, 2015, my landlord told my arbitrator that he would be seeking an order of possession regarding a problem tenant in unit 65 across from my home. This man has been evicted numerous times and the landlord has allowed him to remain in the mobile park and in the home in question that belongs to his father.

The landlord confirmed that an order of possession was issued and that the problem tenant vacated the rental unit owned by his father on October 31, 2015. The landlord stated that the problem tenant is not living at the property or the rental unit, but is legally entitled to attend the manufactured home as an agent of his father. The landlord stated that the problem tenant was preparing the manufactured home for sale on behalf of the owner and is legally entitled to be on the property. The landlord stated that there is no legal recourse to ban the problem tenant from the park.

The tenants stated that "He is still here and still intimidating me and my neighbors." The tenants stated that this individual continues to give her the "finger" as he drives through the park.

Analysis

Section 60 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The onus or burden is on the tenants in this case to establish on a balance of probabilities that a loss of quiet enjoyment occurred. Section 22 of the Manufactured Home Park Tenancy Act states in part:

A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(b) freedom from unreasonable disturbance;

The tenants have provided evidence that they suffer continued disturbances caused by the problem tenant. The tenants stated that a reduction in pad rent is warranted until such time as the problem property is sold and the problem tenant is evicted.

The landlord has provided undisputed evidence that the problem tenant has been evicted as of October 31, 2015 and that this person is still attending the park as an agent of his father to prepare the property for sale. The landlord stated that the landlord has acted with due diligence and properly to resolve the matter of the problem tenant.

I accept the evidence submitted by both parties and find that the tenants have failed in their application. The landlord has acted diligently and responsibly by obtaining an order of possession evicting the tenant from the rental premises. The landlord is not able to ban the problem tenant from the park as he legally acts to prepare the manufactured home for sale. I also note that the tenants have failed to specify an amount for compensation for the loss of quiet enjoyment or for the reduction in pad rent. As such, the tenant's application for compensation is dismissed, as it cannot be said that the landlord failed to act responsibly.

Conclusion

The tenants' is dismissed without leave to reapply.

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 20, 2016

Residential Tenancy Branch

