Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MMNDC, OPT, AAT, RR, FF, O

Introduction

This application convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant applied for the following: a Monetary Order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement; an Order of Possession of the rental site; to allow access to the rental site; to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided; to recover the filing fee; and for "an order for the yearly assessed value".

Both parties appeared at the hearing. The Landlord was represented by the manufactured home park owner M.V. and the managing agent, K.C. The Tenant appeared on his own behalf.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

At the hearing on January 19, 2016 I found that the Tenant failed to provide sufficient particulars in his details of dispute section on his application. Accordingly, it was not possible for the Landlord to adequately respond to the Tenant's claims. As such, I permitted the Landlord the opportunity to provide further evidence in relation to the Tenants claim. At the hearing on March 10, 2016, the parties agreed that all evidence that each party provided had been exchanged. No further issues with respect to service or delivery of documents or evidence were raised by the parties.

The Tenant indicated the he had resolved matters relating to his assessed value such that he no longer required this relief.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?

2. Is the Tenant entitled to an Order of Possession of the manufactured home site?

3. Is the Tenant entitled to an Order permitting him access to the manufactured rental site?

4. Should the Tenant be permitted to reduce rent for repairs, services or facilities agreed upon but not provided?

5. Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The Tenant testified that the tenancy began when he purchased a manufactured home in the subject manufactured home park in September 2000. He advised that his current pad rent is $345.00 per month.

The parties attended a hearing on January 2015 and March 2015. A decision was made on March 30, 2015 wherein the Landlord was ordered to do the following:

> *I find that the Landlord has not provided sufficient clarity with respect to what the site boundaries are. I find that the tenancy agreement provides that the Tenant has access to. In order to give meaning to Section 22 of the Act, I make the following orders:*
>
> 1. *I ORDER that the Landlord hire a professional surveyor, certified by the Province of British Columbia, to prepare a survey of the Tenant's and the WN's sites for the purposes of determining where the boundary line lies between the two sites and where the access area between the two sites exists for the purposes of maintenance.*
>
> 2. *I ORDER that the access area be at least four feet from the side of the Tenant's manufactured home and that the boundary and the common area be clearly marked.*
>
> 3. *I ORDER that the Landlord provide the Tenant and WN with a copy of the surveyor's certificate.*
> 4. *I ORDER that the Landlord comply with the above Orders by July 1, 2015.*

The Tenant confirmed at the hearing that he sought a total of $4,000.00 in monetary compensation for losses he claims to have incurred as a result of the Landlord not complying with the Order as well as a claim for a rent reduction for an alleged breach of his right to quiet enjoyment.

In terms of his claim for compensation for the Landlord failing to comply with the Order he stated as follows.

- He claimed that the Landlord failed to obtain a survey as required by paragraph 1 of the Order. In support, he provided in evidence a document which he claims was drawn by an employee of the Landlord, M.M., or K.M as well as a letter dated June 30, 2015 from M.M. and K.M. which the Tenant testified attached this document.

- He further claimed that the Landlord further failed to provide four feet of access from the side of his manufactured home as required by the Order.

The Tenant also sought a rent reduction in the within application. As he had made another application wherein he previously requested a rent reduction he confirmed that at the time he made the previous application, the basis of his request for a rent reduction was due to his inability to access his home. He stated that his request for a rent reduction at the within hearing was related to the placement of his neighbour's fence, and the location of the water shut off valve for his neighbours' manufactured home site which he claimed is in fact located in his rental site, and which results in repeated unwelcome access by the Landlord to his site without proper notice both while repairs to the water line were made in November of 2015.

When I asked the Tenant whether he received any notice of the repair work to the waterlines he indicated he received a letter dated September 21, 2015.

At the March 10, 2016 hearing the Tenant submitted as follows:

He submitted that he was entitled to compensation for lack of parking as his tenancy agreement provide him with two parking stalls, yet the notice of rent increase failed to make any mention of the parking stalls. The Tenant stated that "if he really wanted to, he could put two vehicles on the street".

The Tenant confirmed that when he moved in the south neighbour's fence was already in place. He stated that when he moved in, he did not have the diagram of the

manufactured home site and it was only after he received the diagram that he understood that he did not have the four feet of access which was provided under the tenancy agreement, nor did he have the two parking stalls which were provided by the agreement.

The Tenant stated that he discovered years ago that his site was impacted by his neighbour's fence but he decided finally that he had to do something about it because "enough is enough".

The Tenant submits that the Landlord did not follow the previous Order, in that they did not provide him access to his manufactured home for service requirements. The Tenant drew my attention to page 5 of 24 of his evidence which was the diagram he was provided with his tenancy agreement. Tenant submitted that the diagrams are an accurate reflection of the neighbour's site.

The Tenant submitted that the Landlord failed to comply with the Order as they did not provide him four feet of access to his manufactured home. The Tenant also submitted that the diagrams provided by the Landlord were not the result of a proper survey such that the Landlord also failed to comply with this requirement.

The Tenant further testified that the Landlord installed two water shut off valves in his site (49) when in fact one of them is in relation to lot 48. The Tenant submits that whenever access to Lot 48's water shut off valve is required, they must go on the Tenant's property. When I asked the Tenant how many times the Landlord has accessed the water shut off for lot 48, the Tenant said he didn't know. He responded that the issue is not the frequency, but the fact this is not supposed to be his yard.

The Tenant further stated that in the afternoon after the last hearing on January 19, 2016, the Landlord's manager, M.M., was on the Tenant's property inspecting the water line. The Tenant submitted that M.M. did not give the Tenant notice that he would be on the property.

The Tenant said that he "tried to find a figure that would compensate him for the loss of quiet enjoyment" and decided on $2,000.00. He failed to provide any further clarification of this amount.

The Landlord, M.V. testified as follows. He stated that he was aware that Arbitrator Holmes had ordered the Landlord to obtain a survey. He stated that they tried to do so, but it simply couldn't be done. He testified that he asked A.K., the Executive Director of the Manufactured Home Park Owners, Alliance of B.C., to assist him in this regard as

he was not able to comply. In support the Landlord submitted a letter from J.K. of I.Land Surveying Ltd. Who writes as follows:

> *"…*
> *If no original design layout plan exists 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.*
> *…"*

The Landlord then pointed out that section 12(b) of the Manufactured Home Park Tenancy Regulation, provides that a Landlord must ensure the tenancy agreement includes the boundaries of a manufactured home site measured from a "fixed point of reference" and that in this case, the fixed point of reference is the manufactured home. He confirmed that they complied with this section as evidenced by the diagram provided in evidence at page 5 of 24.

He further stated that they were simply not able to obtain a survey as Ordered by Arbitrator Holmes, but that they did provide the Tenant with a new site drawing and in doing so they complied with Arbitrator Holmes' decision. The Landlord submitted that the Tenant's claim for compensation for an alleged breach of the Order should be dismissed.

The Landlord submitted that the Tenant is allowed to access the neighbour's property to service his manufactured home as provided for in the tenancy agreement. This is provided for as an addendum to the tenancy agreement which reads as follows:

> *"…Each tenant utilizes the property on their entry side extending to the next mobile home. Each mobile home owner technically has access to four feet on the side of the mobile home opposite the entry for maintenance requirements. Typical pads are between 36-40 feet wide."*

The Landlord testified that every tenant in the park agrees to give the neighbour to the opposite side four feet of access referenced above. He further testified that his knowledge the tenant in site 50 has never impeded the subject Tenant's access to his manufactured home. The Landlord conceded that he was aware that the Tenant and the occupant of site 50 have a problem communicating with each other. Their dispute has resulted in the police being called numerous times by the occupant of site 50. The Landlord confirmed that the manager is available to assist the Tenant should the occupant in site 50 deny him access.

The Landlord also submitted that the Tenant's claim for compensation for loss of parking should also be dismissed. He notes that the Tenant, in his letters to the Landlord, makes multiple references to a bylaw 6.4(d). The Landlord stated that this bylaw only applies to the park as a whole, not to individual sites within the park. The Landlord stated that the Tenant had been informed of this and as evidence submitted an email (which included a copy of a handwritten note in a telephone log) which indicates that the Municipal Inspector, D.J. spoke with the Tenant on November 3, 2014. The Landlord finally stated that the Tenant has the parking which was promised to him when he entered into the tenancy agreement and that nothing has changed since then. The Landlord also submitted a photo of the Tenant's manufactured home showing his vehicle with space for another vehicle to park.

In response to the Tenant's claim that the placement of the neighbour's fence impacted his right to quiet enjoyment the Landlord confirmed that he did not own the park in 2000 but to his knowledge the fence was in existence at that time. He submitted that the Tenant has lived in the park since 2000, and did not have a problem with the placement of the fence until 2014 when he began having a problem with the new neighbour. The Landlord stated that it was also at this time that the Tenant also began complaining about the location of the neighbour's shed.

With respect to the Tenant's claim that the Landlord repeatedly accesses his site without proper notice the Landlord submitted as follows:

- The city and the health department forced the Landlord to repair the waterline. An engineering firm was hired and told the Landlord where to construct the lines. The cost was $300,000 and the main lines were repaired. The Landlord testified that the only time the sites were accessed was when a supply line was installed. Introduced in evidence by the Landlord was a letter dated January 25, 2016 wherein a representative of the excavation company, B.N., wrote that site 49 was accessed for approximately 1 hour.

- The Tenant alleged that the water shut off valve for site 48, was placed on his site. The Landlord submitted that the placement of the site 48 was not on lot 49. In support he refers to the letter noted above wherein the write notes that "nothing more was done on lot 49" such that the Landlord suggested that the lot 48 valve was not placed on 49.

- The Landlord did their best to impact the Tenants as little as possible during this major water line repair. The Landlord stated that he did not receive any

complaints from anyone else, in the 100 site park, except this Tenant. Not only did it have to be done, they were forced to do so. The result was that all the tenants ended up with a better, safer water supply.

- The Landlord stated that if the Tenant was not given 24 hours-notice for the survey, he apologized for this. The Landlord stated that to his knowledge the measurements would have taken an hour, perhaps less.

In reply the Tenant testified that there were a number of blatant mistakes in the site plan provided by the Landlord and which was included in the Tenant's evidence at page 17 of 24. This document includes the following Tenant's corrections: his manufactured home is 20 feet wide (12 feet with an 8 foot addition) not 15'8' as provided for on the Landlord's plan and the distance from the back to the fence is 20" not 14" as noted on the diagram. With respect to the second correction, the Tenant confirmed that it is possible the measurement did not include the wood shed, which he stated was 6' wide.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove their claim.

Section 7(1) of the Act provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;

- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;

- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Tenant has the burden of proof to prove their claim.

In this case the Tenant claims $2,000.00 in compensation for losses he says he incurred as a result of the Landlord failing to comply with Arbitrator Holmes' Order.

I accept the Landlord's evidence that the survey could not be completed. I find that neither the Landlord, nor the Arbitrator could have anticipated that the survey could not be completed at the time the Order was made. I accept the Landlord's evidence that they made their best efforts to comply. As such, I am unable to find that the Landlord willfully failed to comply with the Order as it pertains to obtaining a survey. I also find the Tenant has failed to establish a loss occurred in relation to this claim.

I similarly dismiss the Tenant's claim for compensation as it relates to the Landlord's alleged failure to comply with the Order as it relates to the Tenant's four feet of access. I find that it was not within the contemplation of the parties that the manufactured homes were placed on the property line. As such, the four feet of access is on site 50's property.

The Tenant has four feet of *access* pursuant to the addendum to the tenancy agreement as reproduced in this my Decision. However, there is no "common area" as provided for in the Order. The tenancy agreement specifically provides that the Tenant technically has access to four feet of site 50's property; this does not make this a common area to which each party has equal rights. I accept the Landlord's evidence that to his knowledge, the Tenant has not had any difficulty accessing his manufactured home for maintenance purposes. Notably, the Tenant failed to provide any evidence to support a finding that he has been denied this access. Additionally, he failed to provide any evidence to support a finding that he suffered an associated loss.

For these reasons, I dismiss the Tenant's claim for compensation in the amount of $2,000.00 for losses he claims to have incurred as a result of the Landlord's alleged failure to comply with the Order of Arbitrator Holmes.

I am not able to Order the renter in site 50 to install a gate, or otherwise give up a portion of his manufactured home site to the Tenant. Nor do I believe this is warranted.

The tenancy agreement clearly provides that the Tenant has *access* to four feet; there is no evidence to support a finding that he doesn't have this access. I accept the Landlord's evidence that the renters in the park provide access to the neighbouring sites without incident. I also accept the Landlord's assurance that the manager is available to assist should the occupant in site 50 refuse the Tenant access to this four feet. Accordingly, I dismiss the Tenant's claim for an Order of Possession pursuant to section 47 of the *Manufactured Home Park Tenancy Act,* and his application for access pursuant to section 24 of the *Act.*

I similarly dismiss the Tenant's claim for compensation for $2,000.00 for loss of quiet enjoyment due to lack of parking, the location of the neighbour's fence, the Landlord's access to the manufactured home site for the purposes of servicing the water line and the location of the site 48's water shut off valve.

Section 22 of the *Manufactured Home Park Tenancy Act* provides as follows.

> **22** a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
> (a) Reasonable privacy;
> (b) Freedom from unreasonable disturbance;
> (c) Exclusive possession of the manufactured home site subject only to the landlord's right to enter the manufactured home site in accordance with section 23 *[landlord's right to enter manufactured home site restricted];*
> (d) Use of common areas for reasonable and lawful purpose, free from significant interference

The tenancy agreement provides that the Tenant may have 2 licensed vehicles, and that these vehicles must not be parked on any Park lawns or on home lawns at any time. There is no further mention of parking, and specifically no provision for two parking stalls in front of a particular manufactured home site. As such, I am unable to find that the Landlord is in breach of the tenancy agreement and accordingly dismiss the Tenant's claim for compensation for loss of quiet enjoyment or rent reduction as it relates to parking.

The Tenant testified that the neighbour's fence was in existence when he moved in in 2000. The Landlord testified that to his knowledge this was the case. The site plans which form part of the tenancy agreement confirm that the Tenant's manufactured home is situated *on the property line* such that the neighbour's fence does not encroach on the Tenant's manufactured home site in any way. Accordingly, I find the Tenant has failed to prove the location of the fence infringes his right to quiet enjoyment.

The Tenant alleged the Landlord's access to the manufactured home site for the purposes of the water line repair in November 2015 also breached his right to quiet enjoyment. The Landlord testified that the Tenant was informed of this work as early as September 2015.

I accept that during the water line replacement project there may have been times that services or facilities may have been restricted, or particular sites accessed, but I find that impact was temporary in nature.

I accept the Landlord's evidence and testimony that they took all reasonable steps to ensure the project would minimize the impact to tenants. I also acknowledge that the Landlord understood that the work and its schedule was intensive and required intrusion into individual manufactured home sites.

Residential Tenancy Policy Guideline 6 provides that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises." In this case I find that the Landlord took adequate steps to minimize the disruption to the Tenant when completing the water line replacement. I am persuaded by the evidence submitted by the Landlord, particularly the January 25, 2016 letter from B.N., that the intrusion on the Tenant's manufactured home site was minimal.

I further find that the Tenant failed to prove any associated loss and as such I dismiss his claim in this regard.

The Tenant claimed that the water shut off valve for site 48 is on his manufactured home site. The Landlord testified this was not the case. The Tenant bears the burden of proving his claim, and without any further evidence, I am unable to find that the water shut off valve for site 48 is actually located on his site.

That said, even if I had found that the shut off valve was located on his site, the Tenant failed to submit any evidence to support a finding that his manufactured home site is entered excessively for the purposes of accessing this water shut off valve. In total, I find the Tenant has failed to prove his claim that the Landlord has breached his right to quiet enjoyment as it relates to the water shut off valve for site 48.

The Tenant's claim is dismissed in its entirety. Having been unsuccessful, he is not entitled to recover the filing fee.

Conclusion

The Tenant's claim is dismissed in its entirety.

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: April 8, 2016

Residential Tenancy Branch