



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORD: OPB, MNDC, O, FF
TENANT: O

Preliminary matters

At the start of the conference call the Arbitrator indicated that any agreement between the parties regarding site 21B as a storage unit or storage site is not part of the tenancy agreement and therefore the Residential Tenancy Act has no jurisdiction.

In addition the Landlord has applied for an Order of Possession for a Breach (OPB) of the tenancy agreement. During the preliminary matters discussion the Landlord's Counsel said the Landlord does not want to end the tenancy with the Tenants. Further the Landlord has not issued a Notice to End Tenancy to the Tenants for the potential breach therefore the Landlord's request for an OPB is dismissed.

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, to recover the filing fee for this proceeding and for other considerations.

The Tenant filed an application requesting a review of other considerations.

Service of the hearing documents by the Landlord to the Tenants were done by personal delivery by a process server on April 6, 2016, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on November 28, 2015 in accordance with section 89 of the Act.

The Tenants and the Landlord confirmed that they had received the other party's hearing packages.

Issues to be Decided

Landlord:

1. Are there damages or losses to the Landlord and if so how much?
2. Is the Landlord entitled to compensation for damage or loss and if so how much?
3. What other considerations are there?

Tenant:

1. What other considerations are there?

Background and Evidence

This tenancy started in 1993 and the last tenancy agreement was signed on March 11, 2003. The tenancy is a month to month tenancy. Rent is \$591.00 per month payable on the 1st day of each month.

The Landlord said he purchased the Park in October, 2014. The Tenants were renting site 20B where their manufactured home is situated and the Tenants were paying for the use of the neighbouring site (21B) for storage. The Landlord said he received approval from the municipal authorities to place a manufactured home on the site (21B) in April of 2015. As a result he wrote the Tenants requesting them to remove their shed and belongs so that he could move the manufactured home on to the site and rent it out. The Landlord's Counsel said the Tenants removed their belongings from site 21B in August, 2015. The Landlord's Counsel continued to say the Tenants then moved a steel storage container on to their site to store their belongings. The Landlord's Counsel said the container is encroaching on site 21B by 10 feet so the Landlord cannot move the manufactured home on to site 21B. Further the Landlord Counsel said the Tenants built a fence between their site 20B and site 21B. The Landlord's Counsel said the fence is actually on site 21B not on the boundary of the sites. The Landlord's Counsel said the Tenants did not get permission to move the container onto the site or to build the fence. The Landlord's Counsel continued to say clause 26 of the tenancy agreement states that any alterations or accessories to a manufactured home or site must have the written approval of the Landlord. The Landlord's Counsel said no written approval was issued so the Landlord is requesting the container and fence be removed immediately.

The Tenants said that written approval for alterations has not been needed in the past so they believed that it was not needed for the fence and the container. As well the Tenants said they believe the fence and container are on their site. The Tenants continued to say many alterations have been made in the Park without the Landlord's written approval and so it is not fair that the Landlord is now taking this action on them.

Further the Tenant said this dispute is mainly because the sites are not surveyed. The Tenant said when they move on to the site in 1993 the boundaries were what was seen as the boundaries. The male Tenant said they included a photograph of a fence at the start of the tenancy which shows the boundary to be approximately where the new fence is now. The Tenant said this shows they are not encroaching on site 21B.

The Landlord said he has given written approval for two alterations to sites in the park recently. One was to construct a fence. The Landlord said authorization is needed to alter the sites or the manufactured homes.

The Tenants said many alterations in the Park have been done without written approval.

The Landlord's Counsel continued to say that the Landlord has been unable to rent site 21B because the Tenants have delayed the setting up of the manufactured home on site 21B. Counsel for the Landlord said the home cannot be put on site 21B until the fence and container are moved because these items are encroaching on site 21B by 10 feet. The Landlord said he purchased a manufactured home in August, 2015 and has had it in storage because he is unable to move it to lot 21B in his Park. The Landlord's Counsel said the Landlord is requesting \$575.00 per month of lost rental income from August, 2015 to the present time. The Landlord's application indicates an amount of \$4,025.00 for 7 months up to April, 2016 but now that amount is for 10 months to June, 2016 making it \$5,750.00. As well the Landlord is requesting the storage costs of the manufactured home at \$250.00 per month from August, 2015 to the present in the amount of \$2,500.00.

The Tenants said the Landlord did not advise any of the Tenants in the park he was applying to move a manufactured home onto site 21B and if they knew the Tenants would have opposed it because the site is too small. The Tenants said they understand the Landlord has received approval to move a manufactured home onto site 21B and to rent it out. The Tenants continued to say that the site map in the tenancy agreement and the measurements in the Park are incorrect and the Landlord does not know nor can the Landlord prove where the site boundaries are. The Tenants said they were told and they included a letter from the previous manager of the Park D.D. indicating there is no survey of the sites and the understanding was the boundaries were what you saw on move in. The Tenants submitted additional evidence including the Tenants measurements of what they believe are the boundaries of site 20B and this shows the site plan in the tenancy agreement is wrong. The Tenants said their site has never been actually measured by the Landlord. The site plan in the tenancy agreement indicated the dimensions of site 20B are 33 feet by 60 feet and the Tenant said his actual measurements are 39 feet 8 inches by 83 feet. Given this information the Tenants said the Landlord cannot prove where the boundaries are and therefore the Landlord cannot prove the fence and container are on a portion of site 21B. The Tenants said if the container and fence is on their site then they did not interfere with Landlord moving the manufactured home onto site 21B.

The Landlord's Counsel said the tenancy agreement has a site plan in it and this is the only reference to the site boundaries. As well the Landlord submitted a letter from the previous owner K.T. of the Park that says the Tenants were aware of the site plan in the tenancy agreement and all measurement were correct to the best of his knowledge.

The Landlord's Counsel continued to say that the Landlord sent the Tenant a number of letters to have site 21B vacated. The Tenant said they vacated site 21B and moved their belongings to the container in August, 2015.

The Landlord's Counsel said the Landlord was under the understanding that the container was temporary storage for the Tenants and the container would be moved in a few months. The Tenants agreed the container is temporary storage but they have not finished their renovations so they still need the container. The Tenants said they should be able to move the container in the next few months.

The Landlord's Counsel also commented that the Landlord has some concerns about an extra car on the Tenants site. The Tenancy agreement authorizes two cars and the Tenants have had three cars parked on site.

The Tenant said the third car was a replacement car for one of their cars that was in an accident and that car has been removed from the property so there is no issue about vehicles.

The Tenants continued to present evidence to show the measurements of the site are incorrect and that the site has not been surveyed. The Tenant said clause 34 of the tenancy agreement says that the sites are measured from a fixed point of reference. The Tenant said there is no fixed point of reference that he knows of. The Landlord said he thought the fixed point of reference was the manufactured home or the road but he was unsure of how the site measurements were done.

The Tenant said that all the sites are different in the Park and the site maps in the tenancy agreements are wrong and in many cases are the same site maps. The Tenant said the Landlord cannot prove the container and fence are on site 21B.

The Tenants said in closing that they submitted a large volume of evidence to dispute the Landlord's site measurements. They believe the boundaries on their site are on the other side of the fence they constructed so they are not encroaching on site 21B. The Tenants continued to say the site measurements are wrong and there is no fixed point of reference to measure the sites accurately. Further a number of sites have been removed from the Park because they are not big enough for a manufactured home and they believe that site 21B may be the same.

The Landlord's Counsel said in closing the tenancy agreement is the contract and the best reference document. The Tenants did not get approval to build the fence and move the storage container onto the site therefore according to clause 26 of the tenancy

agreement these items are not authorized and must be removed. Further the tenancy agreement has a site plan in it and it is the only reference document; therefore the Landlord believes the site plan in the tenancy agreement is valid. Consequently the Tenants are encroaching on Site 21B and the Landlord should be successful on removing the container and fence and in recovering his costs of storage and lost rental income.

Analysis

I have reviewed the documented evidence and the testimony of both parties. The basis of all tenancies is the tenancy agreement. Consequently the tenancy agreement is the reference document for most disputes. In this case the Landlord has said clause 26 states a tenant must get approval in writing from the landlord for alterations or additions to a tenant's manufacture home or site. The Landlord said the Tenants did not get written authorizations to move the storage container on to the property or to build the fence. The Tenants said approval for alteration has not been enforced in the Park in the past so they did not think they needed approval for the storage container and fence. I understand the Tenants remarks that approval for alteration or additions may not have been enforced, but moving a storage container and building a fence are substantial alternations to a manufactured home site. Further the Landlord said that he is requiring approval for alteration since he purchased the Park and he has recently given approval for a fence construction on a different site. Consequently I find the Landlord has established grounds to show clause 26 of the tenancy agreement is enforced and must be complied with. I find the Tenants have breached clause 26 of the tenancy agreement by moving a storage container and building a fence in the Park without the Landlord's approval. I order the Tenants to remove the storage container by July 15, 2016. Further I order the Tenants also to remove the fence by July 15, 2016. If the Tenants do not comply with the orders I order the Landlord to remove the container and fence in accordance to the Act and the Landlord is at leave to apply for compensation for any costs incurred.

Further Landlord has provided the tenancy agreement and the agreement has a site map in it for the Tenants' site number 20B. It appears to be initialed by the Tenant and the previous landlord and the Landlord provided a letter from the previous owner stating the Tenant was aware of the site plan and the measurements are correct to his knowledge. The Landlord's Counsel said this evidence should be sufficient to establish the boundaries. Further if the boundaries are as the Landlord says they are then the Tenants are encroaching on site 21B and the Landlord's claims should be valid.

In response the Tenants have presented a large amount of evidence to question whether the site plan is correct and accurate. In particular the Tenant provide a letter from the previous Park Manager stating the sites have not been surveyed or measured and the policy was the boundaries of the sites were what appeared to be the boundaries by eye when a tenant moved in. Further the Tenants provided photographic evidence

that the visual boundaries on move in are similar to what the Tenants actually measured in the site plan they submitted. The Tenants provided evidence that the site plans for other sites may not be accurate as well. The Tenants argued that if the Landlord cannot prove the boundaries of the site plan then the Landlord cannot prove the Tenants' fence and storage container are encroaching on site 21B. The Tenant continued to say if the Landlord cannot prove he is encroaching then the Landlord's monetary claims are unproven as well.

Both parties agreed that the sites in the Park are not surveyed or measured. Further neither party provided expert witness testimony to support their view of where the boundaries of sites 20B and 21B are. Consequently, I conclude that it is unclear whether the site plan attached to the tenancy agreement is or is not accurate. Further the tenancy agreement in clause 34 says the site plan is measured from a fixed point of reference but neither of the parties knew what or where the fixed point of reference is. Therefore again, I conclude that although the site map in the tenancy agreement could be accurate it is not clear and not proven that it is a true representation of the site plan for site 20B the Tenants site. Consequently I find the Landlord has not proven the boundaries of sites 20B or 21B. Given that the boundaries of the sites are not proven I find the Landlord has not established grounds to prove the Tenants have encroached on site 21B and consequently I dismiss the Landlord's monetary claims for lost rental income and storage fees for the manufactured home he purchased in August, 2015.

Further I would encourage the parties to employ an expert to help the parties determine the boundaries of the site to prevent future disputes.

As the Landlord has only been partially successful in this matter I order the Landlord to bear the cost of the filing fee of \$100.00 that he has already paid

Conclusion

The Tenants are ordered to remove the fence and storage container on their site by July 15, 2016.

The Landlord's monetary claims are 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: June 29, 2016

Residential Tenancy Branch