Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, O

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

a. An order for a monetary order in the sum of $690
b. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties requested and were granted the right to make a final written submission

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on October 20, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

a. Whether the tenant is entitled to a monetary order?
d. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

On March 15, 1996 the parties entered into a month to month tenancy agreement for the rental of a manufactured home pad. The present rent is $505 per month payable in advance on the first day of each month. The tenancy pre-dated the coming into force of the Manufactured Home Park Tenancy Act.

The tenancy agreement included the following clause:

- Clause 8 prohibited the tenants from parking or storing vehicles not specified in the agreement in the mobile home park.

- Clause 9 required the tenants to keep the premises in a clean and tidy condition and which prohibited the tenants from cutting down or pruning any trees of bushes, without the consent of the landlord regardless of their location;
- Clause 10 prohibited the Tenants from constructing anything on the Premises without the Landlord's consent and required permits from the City of Langford.

Tenant's Evidence:

The tenant testified that her late husband and she entered into a verbal agreement with the landlord that they could plant a garden, park vehicles and construct a gazebo, hot tub and fence in an area around the manufactured home pad. This agreement took place some time after the tenancy agreement was entered into. No additional rent was paid.

The tenant testified there was no objection from the landlord for the period 1998 to 2006. In 2006 the landlord dug up the garden. The tenant testified the estimated cost to replace the plants is $470.21. In 2014 the landlord took down fences on the Tenant's property from the common are. These panels were replaced by the Tenant at a cost of $217.

In 2014 the landlord constructed a rock wall that blocked the Tenant's ability to use a parking spot.

The relationship between the landlord and the Tenant has deteriorated since 2016. The tenant testified this occurred after the landlord took over from his father

The tenant testified the landlord has breached the covenant of quiet enjoyment based on the following:

- The landlord breached the verbal agreement.
- The landlord has trespassed and come onto her property without permission.
- The landlord has harassed the tenant.
- She is seeking $3000 in compensation for loss of quiet enjoyment because of the annoyance.
- The landlord has inhibited the sale of her manufactured home.
- The landlord has given increasing demands for the removal of everything.
- The landlord is creating a hazard by failing to remove rocks and construction materials for the period February 1, 2014 or 2015 for a period of 4 weeks.

The Tenant's written submission provided evidence that was not provided in the oral hearing including:

- The landlord breached the tenant's right to privacy by
    - Frequent walks on the tenant's pad.
    - Closing windows to the manufactured home.
    - Constructing a fence giving the landlord oversight of the tenant's pad.
    - The landlord's conduct coincided with the passing of the tenant's husband which involved the landlord taking advantage of a single vulnerable woman.

The Tenant's written submission claims for breach of the covenant of quiet enjoyment based on:

- The behaviour of the landlord in face of the verbal agreement on 1996 has amounted to harassment in his aggressiveness.
- The landlord's demands constitute a breach of quiet enjoyment not only because of the verbal agreement but because the landlord has breached the Manufactured Home Park Tenancy Act.
- Any terms especially those that are onerous to the tenant need to be clear. Nothing in the act prohibits improvement.
- The position of the landlord is inhibiting the sale of her manufactured home. The landlord over many years has acquiesced to various improvements and is estopped from attempting to prohibit the improvements.
- The landlord's demands do not comply with section 26(2) of the Manufactured Home Park Tenancy Act because that section requires the Tenant to maintain reasonable health, cleanliness and sanitary standards throughout the manufactured home site and common areas.
- The tenant relies on a letter from P M and her realtor. She also relies on a doctor's note. The letter from PM states he was neighbours with the Tenant and that the tenant and her husband had permission from the previous owner to use a little plot of land to plant a garden and flowers. It goes on and states that the landlord is not a pleasant person.

Landlord's Evidence:

In July 1996 the Tenants began building the decks behind her mobile home without permission of the landlord and City of Langford which resulted in a stop work order.

In order to lift the stop work order the Tenants submitted a plan for a Development Variance permit to the Landlord and the City of Langford to obtain permission to construct decks behind their mobile home.

The plan was approved by the Landlord and City of Langford and a Development Variance Order was issued. The Plan showed two sundecks and a walkway between them. It did not show a hot tub, a shed, a roof over the sundecks, garden areas beyond the pad or additional parking.

Some time prior to 2005 the Tenant installed a hot tub, a shed with electrical service supplied to it and a roof structure over the sun decks. The Tenants did not obtain the written consent of the Landlords and did not obtain permits from the City of Langford for the new construction.

The tenants alleged there is a verbal agreement between the parties but have led no evidence with respect to the details of that verbal agreement including for instance:

- The date the agreement was reached.
- Who was involve in making the agreement
- What improvements the landlord permitted.
- Whether or not the Landlord waived the requirement for the Tenants to obtain permits from the City of Langford.

At some point prior to 2005 the Landlord gave the Tenant verbal permission to plant a garden in an area in front of their unit between Lots 9 and 16, in a Road Access Corridor.

On October 11, 2005 the Landlord provided the Tenants with a lot plan as required by the changes to the Manufactured Home Park Tenancy Act that came into effect that year. The lot plan showed the boundaries. It also showed two sundecks and a walkway between them. It did not show:

- A hot tub
- A shed
- A roof over the sundecks
- Garden areas beyond the pad, or

- Additional parking.

The tenant does not deny receiving the Lot Plan and there is no evidence suggesting she object to the Lot Plan either verbally or in writing at the time she receive it.

The Garden was on the common area between Lot 9 and 16 and not within the boundaries of the Tenant's pad.

By October 2005 the Tenant had stopped tending the Garden Area and it had become disorderly and overgrown. The Tenant did not deny it has become overgrown. In October the Landlord gave the Tenant a notice to clean up the Garden area. The tenant failed to clean it up. On May 31, 2006 the landlord gave the tenant a second letter requiring the Tenant to clean it up. On June 19, 2016 the Landlord sent a letter to the Tenant advising her that the Garden area was to be dug up, reseed and turned into lawn. It asked the Tenant to remove the plants from the Garden Area. No action was taken by the Tenant. In July 2006 the Landlord removed the plants from the Garden Area and reseed it to turn it back into lawn. The Landlord took great care to remove the plants so that the Tenant could plant them elsewhere.

The tenant's son continued to cut down branches and remove trees without the Landlord's permission. The tenant continues to store additional vehicles such as snowmobiles on the property without the landlord's permission.

In 2013 the tenant's fences were rotten and in ill repair. The tenant erected fences which were located in the buffer area and were not on the tenant's pad. In 2013 to 2014 the landlord need to remove a portion of the tenant's fence in order to access and replace a Boundary Fence.

The landlord denied they have ever trespassed on the Tenant's property. They testify they have always given notice as required by the Act. They testified the tenant failed to present any evidence of a history or pattern of behaviour on the landlord's part that would justify the allegations that the landlord is attempting to take advantage on a single vulnerable woman. The landlord testified throughout the tenancy the tenant has been treated with respect. The tenant failed to provide evidence the landlord breached any of the conditions set out in section 22 of the Act.

The written submission of the landlord raised a number of legal arguments which will be dealt with later in this decision. .

<u>Tenant's Reply to the Landlord's Submission:</u>

The Tenants disputes a number of the factual and legal submission of the landlord.

The tenant disputes the submission of the landlord that the use of garden area was a "privilege" granted by the landlord. She submits that implicit with the landlord's submissions that the garden was a "privilege" granted by the Landlord is that there was an oral contract.

She states that written agreement was entered into in March 1996. The garden area was agreed to shortly thereafter.

Similarly there was verbal agreement with regards to the sundeck, hot tub, gazebo and parking spot.

She denies the landlord's allegation that the Garden had was unkempt or overgrown.

She denies the landlord had spoken to her above the condition of the Garden Area.

The tenant tried to save some of the plants by planting them in pots on the deck but the roots were too badly damaged.

The tenant built the decks because the landlord had verbally waived this requirement. The deck has been situated on the pad since 1996.

The tenant's son has verbal permission to cut the branches of trees. In any event he is only cutting branches that brush against the manufactured home.

The tenant disputes the allegation the fence was rotten and in extreme disrepair.

The landlord has waived the requirement of seeking permission from the City of Langford for the improvements such as the gazebo, hot tub, flagpole etc.

Analysis

At the hearing the landlord made a submission that the tenant's claim should be barred by the Limitations Act as it goes back at least 10 years. In the landlord's written submission the landlord states that it agrees with the tenant's submission on section 53 of the Manufactured Home Park Tenancy Act and that the tenants' claims are not barred.

This is a difficult case especially as it involves memories that go back over 20 years. I accept the submission of the tenant that the standard of proof is that of a balance of probabilities.

Based on the disputed evidence of the parties including the oral and written submissions I made the following determinations.

I do not accept the submission of the tenants that the landlord agreed with Tenant that the manufactured home pad was to be increased in size to include the garden area for the following reasons:

- The evidence of the tenant was uncertain. She testified the landlord agreed they could plant a garden. However, she did not say that her pad was to be increased in size. Later, her solicitor stated the landlord agreed to increase the size of the pad but this was not the testimony originally given by the Tenant.
- The Details of Dispute originally filed by the Tenant allege the landlord destroyed the Tenant's garden but it does not say the garden was on the Tenant's pad.
- In 1996 there was no requirement on the landlord to provide a plan setting out the boundaries of the pad. That requirement came into force in 2006. The lot plan given by the landlord to the tenant in 2006 did not include the garden area as part of the pad. The tenant did not dispute this plan of the pad when it was given to her.
- The best determination of the boundaries of the pad is the plan that was given to the City of Langford in 1996 in order to get the variance after a stop work order was made.
- The tenant's submission state the parties entered into a tenancy agreement on in March 1996. Shortly after the parties entered into a verbal contract for the garden area. The pad rent was not increased. Even if the tenant's submission was accepted (and it is not), there is no consideration to make these alleged promises a binding contract.
- The letter provided by the tenant's witness PM includes the following statement: "J and her husband had permission from the previous owner to use a little plot of land to plant a garden and flowers…" The use of the word "permission" is not consistent with a binding legal contract.
- I prefer the landlord's characterisation of the tenant's use of the garden area as privilege allowed by the landlord rather than a right given to the Tenant.
- I do not accept the submission of the tenant that the landlord acquiesced and is estopped.
- I determined the garden area was and remains common property. The fact the landlord gave the tenant permission to use it is not grounds for a claim when the

landlord later wants to regain possession provided the landlord has acted reasonably.

Tenant's claim for the cost of replacing the plants:.

I dismissed the Tenant's claim in the sum of $470 for the cost of replacing the plants. I determined the plants were not planted on the tenant's property but were planted on common property. I determined the landlord acted reasonably when asking the Tenant to remove those plants. She was given a notice in October 2005, May 31, 2006 and June 19, 2006 before the plants were removed and the area was reseeded. In my view the landlord gave the Tenant plenty of Notice and the loss of the plants in this case is the tenant's responsibilities and not that of the landlord.

Tenant's claim for the cost of the fence:

I dismissed the tenant's claim in the sum of $217 for damage for the removal of the fence. I determined the fence in question was located in the buffer zone and off of the Tenant's pad. I determined the fence was in poor repair.

Breach of Covenant of Quiet Enjoyment:

The Monetary Order Worksheet filed by the Tenant claims loss of quiet enjoyment but fails to identify the amount claimed. At the hearing the tenant stated she was claiming $3000 for breach of the covenant of quiet enjoyment.

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

Protection of tenant's right to quiet enjoyment

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 purposes, free from significant interference.

Policy Guideline #6 includes the following:

> Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.
>
> It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.
>
> Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable. A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment, however it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

At the hearing the tenant gave evidence relating to her claim for breach of the covenant of quiet enjoyment including the following:

- The landlord breached his verbal agreement relating to the garden area.
- The landlord harassed her
- The landlord has trespassed on her pad.
- The landlord has inhibited the sale of her trailer
- The landlord is making increasing demands for the removal of everything.
- The landlord created a hazard by failing to remove construction materials in a timely manner.
- The letter from her doctor, real estate agent and PM.

Unfortunately the tenant's written submissions go beyond summarizing the evidence presented and making of a legal submission. The tenant attempted to submit additional evidence which included but is not limited to:

- The landlord frequently walks on the tenants pad
- Closes windows
- The demands of the landlord coincided with the passing of the tenant's husband and the landlord's actions are improper given the tenant is now a single vulnerable woman.

The landlord disputes the claim for breach of the covenant of quiet enjoyment based on the following:

- The landlord denies they have trespassed on the tenant's property and have always given notice to so. The tenant has not provided a single example of the date, time or instance where the landlord has trespassed on the property.
- The tenant's allegation that the landlord is taking advantage of a single, vulnerable woman after the passing of the Tenant's husband is scandalous and vexatious and the tenant has failed to led evidence of a history or pattern of behaviour that would justify these allegations.
- There is no evidence the landlord has breached any of section 22 of the Act.
- The tenant has failed to lead evidence that the landlord's conduct was unreasonable, harsh, and burdensome or beyond what a reasonable landlord would do in like circumstances.

After carefully considering all of the evidence and the submissions of the parties I determined the tenant has failed to establish a claim for the breach of the covenant of quiet enjoyment for the following reasons:

- The evidence of the tenant lacked sufficient detail and precisions to be given much weight. They amounted to general allegations but failed to even approximate dates and precisions of what was said. The effect of the lack of precisions is deny the landlord of an opportunity to defend themselves and a denial of the principles of natural justice.
- The tenant failed to provide specific dates as to when the landlord was alleged to have trespassed on the property.
- The tenant alleged but failed to provide sufficient proof to establish that the landlord took advantage of a single, vulnerable woman.
- I have determined that the Garden Plot was not part of the tenant's pad and the landlord acted reasonably when he re-gained possession after giving the tenant's several months notice.

- I further determined that the hot tub, shed, roof over the sundecks did not have the approval of the landlord and the City of Langford and contravene the tenancy agreement. The landlord's insistence to follow the tenancy agreement does not amount to the breach of the covenant of quiet enjoyment.
- I do not accept the submission that a landlord trying to enforce their legal rights can amount to the breach of the covenant of quiet enjoyment in the context of this case. I determined the tenant has constructed improvements without the written consent of the landlord that extend beyond the pad and that the landlord has a legal right to demand the tenant remove those improvements.
- The evidence presented by the tenant at the hearing provides that disputes do not amount to a breach of the covenant of quiet enjoyment. The tenant gave evidence as to a dispute relating to the removal of a garden which occurred 10 years ago, the removal of a portion of a fence that took place 2 years ago, the occasional demand to clean the pad and remove items from the Pad and the refusal to allow a purchaser of the Tenant's manufactured home to keep improvements to the pad based on an interpretation of the tenancy agreement. Either party had the right to make a timely application to the Residential Tenancy Branch if there was a dispute.
- I do not accept the submission of the Tenant that the landlord was in breach of the Act and tenancy agreement in demanding the tenant clean the property and remove the improvements that were constructed without the landlord's approval and the approval of the City of Langford. I do not accept the submission that the landlord has acquiesced and is estopped from asserting these rights.
- The evidence of the real estate agent is to be given little weight as it is not based on evidence as to the landlord's conduct or relationship with the Tenant.
- I accept the evidence of the Tenant's doctor as to the affect the dispute has had on the tenant's health. However the letter is of little help in determining whether the landlord or the tenant is responsible for this dispute. .

I determined the Tenant has failed to establish a claim against the landlord for breach of the covenant of quiet enjoyment.

Conclusion

In summary I determined the tenant failed to establish a claim against the landlord and accordingly the claim is dismissed. The tenant alleged the landlord is interfering with the sale of her manufactured home. That was not raise in the Application for Dispute Resolution and I have only dealt with the issue to the extent that it is related to the tenant's claims raised in these proceedings.

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 6, 2016

Residential Tenancy Branch