Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0701120 BC LTD dba SNOWY PEAKS R.V.,
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC O FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant and Occupant on June 3, 2016. The Tenant filed seeking an order to have the Landlord comply with the *Act,* Regulation, or tenancy agreement; for other reasons, and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlords, the Tenant, and the Occupant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each person was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The parties confirmed the respondents named on the Tenant's application were employees or Agents of the corporate Landlord. Neither party raised any issues with amending the application to include the corporate Landlord's name. Accordingly, the style of cause was amended to include the corporate Landlord's name, in accordance with section *64 (3)(c)* of the *Act.*

The Tenant testified that she was the sole owner of the manufactured home and she was the only Tenant listed on the tenancy agreement. Her male partner/spouse moved into manufactured home after the tenancy was created and has not formally been added to the written tenancy agreement.

An occupant is defined in the *Residential Tenancy Policy Guideline Manual*, section 13 as follows: where a tenant allows a person who is not a tenant to move into the premises, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a written tenancy agreement to include the new occupant as a tenant.

Based upon the aforementioned and notwithstanding the fact the male Applicant was introduced as the Tenant's spouse and may be registered as an occupant or tenant with the Landlord; I find there was insufficient evidence before me to prove the male Applicant had been added to the written tenancy agreement as a tenant. Therefore, at this time I find the male Applicant to be an occupant. Therefore the style of cause on this Decision was amended to remove the name of the male occupant, pursuant to section 64(3)(c) of the Act.

Each person confirmed receipt of the evidence submitted by the other party. No issues or concerns were raised by either party regarding receipt or service of that evidence. Accordingly, I considered all relevant submissions from the Tenant and Landlords.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. While I have considered all oral submissions and evidence that was presented during the hearing, not all that was considered is listed in this Decision.

Issue(s) to be Decided

1. Should the Landlords be ordered to comply with the *Act,* Regulation, or tenancy agreement?
2. Has the Tenant proven entitlement to an order allowing her to finish building the storage shed on the manufactured home park site (the Site) in its current location and size?
3. Should the Tenant be allowed to keep the existing storage container on the Site?
4. Is the Tenant entitled to the Site measurements / property lines of her rental Site?

Background and Evidence

The tenancy began on June 29, 2010 at which time the Tenant signed the Park Rules & Regulations document (as submitted into evidence) agreeing to the terms as listed in that document. Rent was initially $265.00 payable on the first of each month and was subsequently increased to the current rent of $300.00 per month.

The manufactured home park (the Park) was built in 1948 and has 32 Sites. The Landlords testified the Regional District (RD) does not have surveying records or Park plans on file for this Park. The Landlords submitted they had checked with the RD to try and obtain records and were told the Park was constructed prior to the RD keeping such records.

The Landlords confirmed they have not had any contact with the Ministry of Heath regarding the septic system. They asserted there was no need to contact the Ministry of Health as they were aware of the location of the septic tank(s) and all drainage lines.

At the end of April 2016 the Landlord(s) attended the Tenant's manufactured home park site (the Site) and spoke with the Occupant, during the Tenant's absence, to request that all uninsured vehicles be removed from the Site. An argument ensued after which the Landlords sent the Tenant a text message informing her of the requirement to remove the uninsured vehicles. Since that time the evidence suggested the landlord/tenant relationship has become adversarial.

Additional evidence was submitted regarding several disputes which have occurred between the Tenant, the Occupant, and the tenants residing in the Site directly beside the Tenant's Site.

On April 30, 2016 the Landlords issued two letters to the Occupant, one of which stated in part, as follows:

> *The reason for this letter is for Immediate removable of all vehicle parts and uninsured vehicles. This reflects the rules of the mobile home park that [Tenant's name] has signed. We will not tolerate storage of vehicle parts, uninsured vehicles, or non-running vehicles.*
>
> *…Also the not asking permission for the building of a storage shed on a lease lot belonging to [the Park name]*
>
> [Reproduced as written excluding Tenant's name and the Park's name]

The Tenant now seeks several orders as follows:

(1) An order allowing her to finishing building an exterior storage shed, in its current location and of its current size of 140 square feet. The Tenant has not applied for a building permit from

the Regional District (RD) relating to the construction of this storage shed. The Tenant argued they are trying to comply with the Landlords' requests to clean up their Site and need to build the shed in order to remove the temporary fabric awning/shed.

(2) An order allowing the Tenant to keep the existing storage container on the Site. The storage container was originally a car trailer and currently sits on skids or wood. The wheels and trailer hitch were removed from that car trailer. The contents of this former trailer are a homemade hot rod vehicle which the Tenant argued was a work of art. The vehicle does not have a serial number and is not able to be insured or licensed as a vehicle.

(3) The Tenant has requested the Landlords be ordered to provide her with her Site measurements and property lines so they can place their new shed within the required property lines and setbacks and deal with issues arising with their neighbours.

(4) The Tenant argued the Landlords are not complying with the Park Rules and Regulations and are not enforcing the rules equitably with every tenant. The Tenant submitted evidence of the Landlords changing the Park Rules and Regulations by issuing her letters; letters which have not been issued to all tenants and no formal amendments to the Park Rules have been issued.

The Landlords testified the Tenant is constructing a new shed overtop of the septic field lines. They submitted that every second Site in the Park has septic field lines running through the Site and the Tenant's Site is one that has septic lines. They have requested the Tenant move her shed to the other side of the Site to ensure it is not over top of septic lines and also to ensure the shed is within the required RD setbacks.

The Landlords argued they had checked the RD website and determined that the requirements for exterior sheds in their RD had changed. The Landlords asserted the RD does not require a building permit for a shed that is equal to or less than 10' x 10' and anything larger than 10' x 10' would require a building permit. The Landlords argued that after checking that website they changed the Park rules to limit the size of exterior sheds to less than or equal to 10' x 10'.

The Landlords testified they changed the Park rules allowing two storage sheds on each Site up to 10' x 10' in size. They stated they informed the Tenant and the Occupant of the Park Rule changes in their letter dated May 12, 2016. The Landlords stated they also changed the Park rules to stipulate that all vehicles inside the Park for more than 30 days must be registered and licensed by the Province of B.C.

The Landlords confirmed they had not served every tenant in the Park with copies of these new rules; however, they said they had provided updated Park rules to realtors who have listed homes for sale in the Park recently.
The Landlords issued the Tenant a letter dated May 12, 2016 which indicated they were changing the Park Rules to include, in part, the following. In addition to the changes regarding out of province insured vehicles and allowing two storage sheds of a size of 10' x 10'; the letter also included the following:

> *Rent payments can be sent by e transfer or postdated checks. We will no longer allow [Occupant's name] or [Tenant's name] or any association in our store, shop or on our private premises. This is to avoid any confrontation with [Tenant's and Occupant's name].*
>
> *After the receipt of this letter you will have up to ten days to comply. The next step will be up to the rentals man to decide.*
>
> [Reproduced as written]

The Landlords testified they had no issue regarding the Tenant having the former car trailer, now a hot rod storage container, on the Site in addition to that car storage shed. They stated their issue was primarily with the size and location of the newly constructed shed.

The Landlords submitted the Sites in the Park are not surveyed or marked to identify each Site's boundary. The Landlords confirmed the Tenant's site does not have a fence and there are no clear boundaries identified.

The Tenant submitted evidence of disputes which have been ongoing for many years between her, the Occupant, and the neighbors. That evidence included the Tenant requesting information regarding the Site borders to assist her in managing access to and from their Site.

The Tenant testified they have the following vehicles currently parked or stored on the property: (1) the Tenant's 2001 Jeep B.C. licensed and insured to May 2017; (2) the Occupants 199 Ford F150 licensed and insured in another province to February 2017; a vehicle trailer c/w hitch that is parked beside the Home, not in the drive, with 2 Harley Davidson motorcycles licensed and insured stored inside; one quad all-terrain vehicle currently parked beside the home directly in front of the vehicle trailer; and the vehicle trailer sitting on skids, with the wheels and hitch removed, with the Occupant's hot rod stored inside.

The Park Rules & Regulations dated March 2009 stipulate in part, as follows:

> *B.1. The manufactured Home and site shall be attractively maintained by the Tenant and shall comply with all applicable laws, ordinances and regulations of the Province, District and Municipality as from time to time amended.*
>
> *B.4. Storage Shed: One storage shed outside the Home shall be allowed provided it is placed on lot location approved by Management. It any not exceed 140 sq. ft. in size and must be finished on the exterior with material and colour to complement Home.*
>
> *G.1. A maximum of two (2) licensed and insured vehicles in good repair and appearance will be allowed per Lot and are to be parked in the driveways provided, not in areas designed for lawns or landscaping.*
>
> *G.4. Noisy vehicles including but not limited to motorcycles, snowmobiles, all terrain vehicles, hot rods or other disturbing conveyances are not allowed in the Park.*
>
> [Reproduced as written]

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Regarding the request to have the Landlords comply with the *Act,* Regulation, or tenancy agreement:

Section 29 of the Regulations provides that prior to a person's entering into a tenancy agreement with a landlord, the landlord must disclose in writing to that person all rules in effect at the time of his or her entering into the tenancy agreement. Subsequent to a tenant's entering into a tenancy agreement with a landlord, the landlord must give notice in writing to that tenant of any rule at least two weeks before the rule becomes effective.

The Regulations further stipulate how rules can be made or changed as follows:

30 (1) The park committee or, if there is no park committee, the landlord, may establish, change or repeal a rule if it is reasonable in the circumstances and if the rule has one of the following effects:

(a) it promotes the convenience or safety of the tenants;
(b) it protects and preserves the condition of the manufactured home park or the landlord's property;
(c) it regulates access to or fairly distributes a service or facility;
(d) it regulates pets in common areas.

(2) If there is a park committee, the rules must be established, changed or repealed according to the procedure set out in sections 22 *[park committee decisions]* and 23*[vote by landlord and tenants]*.

(3) A rule established, or the effect of a change or repeal of a rule changed or repealed, pursuant to subsection (1) is enforceable against a tenant only if

(a) the rule applies to all tenants in a fair manner,
(b) the rule is clear enough that a reasonable tenant can understand how to comply with the rule,
(c) notice of the rule is given to the tenant in accordance with section 29 *[disclosure]*, and
(d) the rule does not change a material term of the tenancy agreement.

Section 55 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 55 (3) of the *Act* stipulates that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this *Act* applies.

Upon review of the evidence, and inconsideration of the above, I find the Park Rules and Regulations which were established in March 2009 and signed by the Tenant at the outset of her tenancy meet the requirements of the Regulations. I further find the aforementioned Park Rules and Regulations are in full force and effect, pursuant to section 55(2) of the *Act.*

I accept the Landlords' submission that they have the authority to change the Park Rules and Regulations. That being said, I find pursuant to section 55(2) of the *Act*, the Landlords' May 12, 2016 letter to the Tenant does not meet the requirements of sections 29 and 30 to effectively change the March 2009 Park Rules and Regulations. I make this finding in part, as the changes were not: formally added to the Park Rules and Regulations document; copies of the amended Park Rules and Regulations were not served upon all tenants of the Park; and the Tenants of the Park were not provided two weeks' notice of the proposed changes prior to their effective date. I find the new rule that all sheds must be less than 10' x 10' was created after the Tenant began construction of their shed and therefore may not apply to the Tenant if her shed meets the requirements of the R.D. In addition, I find the new rule that vehicles in the Park need to be licensed in the Province of B.C. to be unconscionable and is therefore, unenforceable. Accordingly, I find the Park Rule changes listed in the May 12, 2016 letter to be in breach of the Regulations and are of no force or effect at this time.

It is irrefutable that neither party in this dispute has complied fully with the *Act,* Regulations, or the Park Rules regarding their positions as landlord and tenant. Therefore, I remind both parties they are bound by the *Act,* Regulations, and tenancy agreement and I encourage both parties to educate themselves on their rights and obligations under the aforementioned statutes.

Regarding the Tenant's request for an order to allow her to finish building the storage shed on the Site in its current location and size.

From the Park Rules and Regulations section B.4, the Tenant may have one storage shed outside the Home provided it is placed on the Site in a location approved by Management and provided the shed does not exceed 140 sq. ft. in size. In addition, section B.1 stipulates the Site must comply with all applicable laws, ordinances and regulations of the Province, District and Municipality.

Based on the above, I find the Tenant submitted insufficient evidence to be granted an Order to allow her to construct a 140 sq. ft. storage shed in its current location. Notwithstanding the argument that the current park rules allow for a shed that size, there was evidence that the current building location was on top of septic field lines, which may or may not be in breach of municipal or provincial health regulations, and the current size of the shed may or may not require a building permit from the RD. The Tenant submitted insufficient evidence to prove either. Accordingly, I dismiss the Tenant's request for an order to allow her to finish building the storage shed on the Site in its current location and size.

If in the future the Tenant obtains the required building permits; written permission from the governing authority regarding the placement of a storage shed over top of septic field lines; then if the Landlords continue to refuse permission to build the shed in that location the Tenant would be at liberty to file another application for Dispute Resolution to seek such an order. The Tenant would however, have to prove the merits of that application and an arbitrator would then make a determination based on the evidence before them at that time.

Regarding the Tenant's request to keep the current storage container on the Site

No issues or concerns were raised regarding the Tenant having the car trailer converted to a hot rod storage container on the Site, in addition to a separate storage shed. As such there is no requirement to issue an order to grant the Tenant permission, as permission has been granted by the Landlords.

Regarding the Tenant's request for Site measurements and/or property lines

Section 1 of the *Act* stipulates definitions for: a tenancy agreement; a manufactured home; a manufactured home site; a manufactured home park; and common areas. Sections 12 and 13 of the *Act* stipulate the required information that must be included in a tenancy agreement which includes a description of the Site address and the amount of rent a tenant is required to pay for occupation of that Site.

Residential Tenancy Policy Guideline 16, with which I concur, suggests that a tenant is expected to pay rent and a landlord is expected to provide the premises as agreed to. The guideline further suggests that if a tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages even where there is no negligence on the part of the landlord.
Section 22 of the *Act* provides that 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.

Based on the above sections of the *Act* and Policy Guidelines, and pursuant to section 55 of the *Act,* I find it is reasonable to conclude tenants of a manufactured home park must be provided with clearly identified boundaries of their rental Site and common areas for which they are paying rent to occupy. As such, I order the Landlords to clearly identify the boundaries of the Tenant's Site no later than **July 31, 2016**, pursuant to section 55 of the *Act.*

Section 65(1) of the Act stipulates that the director may order payment or repayment of a fee under section 52 (2) (c) *[starting proceedings]* or 72(3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has partially succeeded with their application; therefore, I award recovery of the filing fee in the amount of **$100.00**, pursuant to section 65(1) of the *Act*.

The parties are reminded of the provisions of section 65(2) of the *Act*, which authorizes a tenant to reduce her rent payments by any amount director orders a landlord to pay to a tenant, which in these circumstances is $100.00.

Conclusion

The Tenant was partially successful with her application and was granted recovery of their $100.00 filing fee. The Landlords and Tenant were both ordered to comply with the *Act,* Regulation, and tenancy agreement and the Landlords were ordered to clearly identify the boundaries of the Tenant's Site no later than **July 31, 2016**.

This decision is final, legally binding, and 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: July 18, 2016

Residential Tenancy Branch