



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF, O; LRE, OLC, FF

Introduction

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

- an early end to this tenancy and an order of possession pursuant to section 49;
- authorization to recover the filing fee for this application from the tenant pursuant to section 65.
- "other" remedies in the form of an order that the tenant remove the fence and all other possessions placed on site 21B, an order that the tenant is not to obstruct access to site 21B and an order the tenant permit the landlord's surveyors access to pad 20B for the purposes of obtaining a survey.

This hearing also addressed the tenants' cross application for:

- an order to suspend or set conditions on the landlord's right to enter the manufactured home site pursuant to section 63;
- an order requiring the landlord to comply with the *Act*, *Manufactured Home Park Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 65.

The landlord and tenants attended the hearing. At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary Issue –Order to Remove Fence

At the outset of the hearing, the parties agreed that a previous Decision was rendered on June 29, 2016 regarding this tenancy. The file number has been included on the front page of this Decision for ease of reference. In the June 29, 2016 Decision, the Arbitrator found the tenants breached section 26 of their tenancy agreement by building a fence without landlord approval and therefore ordered the tenants to remove the fence by July 15, 2016. The Arbitrator further ordered the landlord to remove the fence in the event the tenants did not comply with the fence removal order by July 15, 2016. In the Decision, the Arbitrator advised the parties that the landlord was at leave to apply for compensation for any cost incurred in removing the fence.

During this hearing the landlord contended that following the June 29, 2016 Decision, the tenants removed the fence panels but failed to remove the fence posts. Further the landlord testified that the tenants erected a new structure separating the two properties without consent from the landlord. The landlord provided photographs of the fence before and after the June 29, 2016 Decision.

The tenants argued that the fence was removed and the “new structure” the landlord refers to is not new at all. The structure consists of beams that previously sat just inside the fence. After some questioning, the tenants acknowledged that the beams were removed from their location and placed on the fence line.

Upon review of the submitted photographs by both parties, I am satisfied the fence was not removed in its entirety.

I cannot change or vary a matter already heard and decided upon as I am bound by the earlier decision. Therefore the portion of the landlord’s application related to the original fence removal is dismissed without leave to reapply. The original order to remove the fence still stands. The landlord may apply for compensation in removing the original fence.

In relation to the new structure, I find the tenants have breached 26 of their tenancy agreement by erecting a structure separating the sites without approval of the landlord and therefore order the tenants to remove this structure no later than November 15, 2016. In the event the tenant does not comply with this order I order the landlord to remove the structure or fence. The landlord is at liberty to apply for compensation for costs incurred.

Issue(s) to be Decided

Is the landlord entitled to end this tenancy early and an order of possession?

Is the landlord entitled to an order that the tenant is not to obstruct access to site 21B?

Is the landlord entitled to an order that the tenant permit the landlord's surveyors access to pad 20B for the purposes of obtaining a survey?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the manufactured home site?

Is the tenant entitled to an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement?

Is either party authorized to recover the filing fee for this application?

Background and Evidence

As per the testimony of the parties, the tenancy began in 1993 on a month-to-month basis. Rent in the amount of \$591.00 is payable on the first of each month. The tenant continues to reside in the manufactured home on the manufactured home site.

The parties are engaged in a heated dispute over site boundaries. The landlord received approval from municipal authorities to place a manufactured home on the site adjacent to the tenants. It is the landlord's position that the tenants previously erected fence and newly erected structure encroaches on the adjacent site by 10 feet thereby preventing the landlord from placing the newly purchased manufactured home on the adjacent site. It is the tenants' position that they are not encroaching on the adjacent site.

Both parties have provided an abundant amount of documentary evidence in an attempt to substantiate their particular site measurements; however neither party provided expert witness testimony to support their position of where the site boundaries are.

In the June 29, 2016 Decision, the Arbitrator determined that it was unclear what the boundaries were and encouraged the parties to employ an expert to help the parties determine the boundaries of the site to prevent future disputes.

Landlord

Following the June 29, 2016 Decision, the landlord scheduled a total of three surveyors. The first surveyor did not show up, the second surveyor attended but then went on holidays and ultimately withdrew his services after communicating with the tenants. The third surveyor is the surveyor that conducted the original park survey in 1983. The landlord testified that this surveyor would be the most neutral as this surveyor would use records from 1983 rather than rely on information from the landlord or tenant. This surveyor was denied access to the manufactured home site by the tenant. The landlord seeks to have the third surveyor conduct the survey.

Tenants

The tenants agreed the first surveyor did not show up. In relation to the second surveyor, the tenants indicate that this surveyor was using information solely from the landlord as he was hired by the landlord. The tenants attempted to neutralize this survey by volunteering to pay for half; however the landlord did not reply to this request. It is the tenants' position that the landlord is employing surveyors to work on his behalf creating a survey that would benefit him only. The tenants acknowledged they denied access to the last surveyor pending a decision by the Residential Tenancy Branch.

It is the tenants' preference that the Residential Tenancy Branch order an impartial surveyor to conduct a survey of the existing sites to establish the boundary line between the two sites.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an order of possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause. In order to end a tenancy early and issue an order of possession under section 56, I need to be satisfied that the tenants have done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

it would be unreasonable, or unfair to the landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

Based on the testimony of both parties and my review of the written evidence, I find that the landlord has failed to prove the tenants' refusal to allow surveyors access to the manufactured home site warrants an early end to tenancy.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

As I am not satisfied that the landlord has demonstrated that it would be unfair or unreasonable to await a notice to end tenancy for cause to take effect, I dismiss the landlord's application for an early end to this tenancy.

In the absence of expert witness testimony to establish where the site boundaries are, I find it remains unclear where the site boundaries are situated. Therefore in order to assist in establishing the site boundaries, I order a survey to be conducted by the professional surveyor who initially conducted the survey in 1983, at the expense of the landlord. I find this surveyor is most likely to proceed in an impartial manner, without input from either party. The tenants are ordered to permit the landlord's surveyors access to the manufactured home site, 20B and the tenants are ordered not to obstruct

access to site 20B and 21B for the purposes of obtaining the survey. The tenants are cautioned that any interference with the survey may put their tenancy in jeopardy.

I am not satisfied that the landlord is likely to enter the manufactured home site in contravention of the *Act* and for this reason I dismiss the tenants application for an order to suspend or set conditions on the landlords right to enter the manufactured home site.

As neither party was entirely successful in their applications, I find the landlord and tenants are not entitled to recover their respective filing fees.

Conclusion

The landlords claim for an order for the tenant to remove the original fence is dismissed without leave to reapply. The original order dated June 29, 2016 still stands.

The tenants are ordered to remove the structure separating manufactured home site 20B and 21B no later than November 15, 2016.

The landlord's application to end this tenancy early and obtain an order of possession is dismissed without leave to reapply.

I order a survey to be conducted by the professional surveyor who initially conducted the survey in 1983, at the expense of the landlord.

The tenants are ordered to permit the landlord's surveyor access to manufactured home site 20B and 21B for the purposes of obtaining a survey.

The tenants are ordered not to obstruct access to site 20B and 21B for the purposes of obtaining a survey.

The tenant's entire application is dismissed without leave to reapply.

Neither party is authorized to recover the filing fee.

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: November 1, 2016

Residential Tenancy Branch

DECISION AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON DECEMBER 14, 2016
AT THE PLACES INDICATED.