Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding S & H's Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OLC, PSF O, FF

Introduction

This hearing was scheduled in response to the tenants' application made on November 9, 2016 in which the tenants have sought an order the landlord comply with the Act and to provide services or facilities required by law.

On November 24, 2016 the landlord applied requesting "other" and to recover the filing fee costs from the tenants.

The landlords' application set out conditions the landlord submits the tenants must meet in relation to parking and placement of structures and shrubs on the property.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence provided.

Preliminary Matters

At the start of the hearing all parties on nine different telephone lines were identified. The witnesses were excused from the hearing, to wait until such time as they might be called to testify.

The parties confirmed receipt of the hearing documents and evidence, with no dispute in relation to the timing of receipt.

The landlord had copies of coloured photographs taken by the tenants. Those photographs were submitted to the Residential Tenancy Branch (RTB) as digital evidence. The landlord has been able to view the photographs. During the hearing I was unable to view the photographs as the format was not compatible with the computer system. I explained that a party is entitled to submit photographs in any format they choose and that copies of paper photos are suitable.

The tenants submitted evidence that contained a monetary worksheet, setting out a monetary claim. The application did not include any monetary claim and was not amended to include a monetary claim.

Landlord S.H. provided testimony on behalf of both landlords'.

Issue(s) to be Decided

Must the tenants cease parking in the area that has been in use since the start of the tenancy in 1984?

Must the tenants remove a boat shed that has been erected?

Must the tenants remove cedars shrubs that have been planted along the parking area in dispute?

Must the tenants relocate their manufactured home?

Must the tenants pay for use of an additional site, in the sum of $300.00 per month from May 1, 2016 onward?

Background and Evidence

When establishing the terms of this tenancy the landlords' claim was again reviewed, to obtain clarification. Despite the details of dispute provided with the application the landlord said that the only structure in dispute is the structure referred to as the boat shed that the landlord says is located on lot #50. The landlord said that any other structure in use by the tenants is in compliance. The landlord said it would not be reasonable to expect the tenants to move the manufactured home.

The tenancy commenced in 1984 when the tenants purchased the home and became managers for the previous owner of the Park; Mr. F.T. The tenants have owned the home on site #51 since that time. At the time of purchase the tenants say the vendor, the current Park manager at the time and the Park owner all said the tenants should park alongside the home, adjacent to the adjoining site; #50.

The tenant had a copy of the Park *Regulations* which, as managers, they eventually transferred to a computer document. A copy of that document, dated May 1, 1991 was supplied as evidence. Clause three of the *Regulations* dated 1991 provides:

> *"No carports, shelters, joey sheds, cabanas or ramadas are to be placed on the trailer space rented or on other parts of the Park without first obtaining written consent of the management of it duly authorized agent."*

A second, undated document entitled *Rules and Regulations* was supplied by the tenants. Clause three provides:

> *"No carports, shelters, joey sheds, cabanas, ramadas, fences or any type of building or alteration are to be started on until initial approval is given by the Landlord and final approval/permit is issued by the Municipality."*

This document was signed by the tenants.

A copy of a map of the Park supplied to the tenants by the current owner of the Park was submitted as evidence. The tenants went to the town office to investigate the map and were told it was created in 2006.

When the tenants purchased the home the area on the side of the home that would normally be used for parking had an embankment that would not accommodate room for parking. The tenants parked on the other side of the home, adjacent to lot #50 and have done so since 1984. This fact was not in dispute.

Originally there was a small holiday trailer on lot #50 and the owner of that home parked alongside the tenants. The holiday trailer was removed in 2004 and since that time no one has occupied site #50.

Between 1985 and 1986 the tenants worked to reduce the embankment next to their home. They installed a rock retaining wall and created usable space. The owner of the Park was aware of this work that was completed, with no cost to the Park owner.

In either 1991 or 1992 the tenants erected a metal boat shed at the top of the area they use for parking. The tenants had approached the municipality and were told a permit was not required for this type of structure. The boat shed has been in place since that time. The tenants continued to act as management at this time and obtained verbal approval from the Park owner, Mr. F.T.

In 2010 or 2011 the tenants planted a number of small cedar shrubs directly alongside the parking and shed area. The tenants had been told to take steps to beautify the Park and the shrubs did not encroach on the neighbouring site. The tenants said that after the shrubs were planted, in 2005 Mr. F.T.'s daughter told the tenants they had planted shrubs on site #50. The daughter also told the tenants the shed should not be located where it was and that the tenants should not park where they had been parking. The tenants told the owners' daughter that the previous Park manager, her father and the vendor of the home had instructed them to park in this area.

Photos of the parking area and shed were supplied as evidence by the landlord.

The tenants said they were never given any written direction by owner Mr. F.T. to alter the parking or to remove the shed and shrubs. Other than the comments made by the owners daughter, no other complaints related to the parking, shrubs and boat shed were brought forward.

In 2005 the tenants ceased their employment with the owner of the Park. The Park was sold to the current landlord effective May 1, 2016.

The tenants said that in the summer of 2016 the new owners told them they must remove the boat shed or they would be evicted.

Counsel for the tenants stated that the boat shed was erected with the permission of the Park owner at the time and that the tenants have been parking next to their home since 1984. This parking is a material term of the tenancy and has been in place for over 30 years. Regardless of what the new owners say they cannot remove that term.

Counsel pointed to the *Assignment of Leases* document that formed part of the purchase agreement for the Park, effective May 1, 2016. Clause 3 of that agreement indicates the purchaser will assume the obligations of the vender under the leases and agrees that it will observe and perform all of the obligations of the vendor under the leases. Counsel stated that the purchasers have a legal obligation to respect the terms of the tenancy. When this tenancy commenced the MHPT Act did not exist. Section 14

of the Act now prohibits a landlord from changing a standard term of a tenancy agreement. A new owner cannot come in and change what has been in place for 30 years. Counsel submits parking is not a service or facility but part of the tenancy over the past 30 years.

In relation to the boat shed counsel states that the tenants wish to have the shed remain. There was implied consent by the previous Park owners that the shed could remain on the site and now the new owners wish to pretend that the shed and parking are not terms of the tenancy.

The tenants supplied letters issued by a previous neighbour, M.M. who writes that he lived on site #50 and had parking adjacent to the tenants on site #51. M.M. lived in the Park in the early 1980's and witnessed the tenants using the parking and sheds. Another part tenant, R.I. writes that site #50 had a divided parking area with site #51. R.I. parked alongside the tenants and that there was no other parking at the end of their side of the street.

In relation to a metal pole that had been placed at the corner of site #50 and #51, the tenants obtained a letter from P.Q., who retired as Park manager in 2015. P.Q. writes on September 30, 2016 that no two sites in the park were the same size and that no markers were "previously existing or in place as of last year." The tenants submit that the metal poles the landlord says mark the lot boundary were placed by the landlord and that they do not represent the actual site boundaries.

The landlord had their witness, D.M. enter the hearing to testify. D.M. is the daughter of the previous Park owner, Mr. F.T. D.M. states that she began to assist her father with the Park management 10 years ago. D.M. confirmed that the tenants were told not to park in the area they had been using and that they must remove the boat shed. As the cedar shrubs were so small D.M. did not direct the tenants to remove the shrubs. D.M. said it was the previous tenants of site #50 who had allowed them to park in the area. D.M. said her father had also talked to the tenants about the shed and parking but could not recall when that conversation may have occurred.

The landlord said that there is no written evidence the landlord was asking to remove what had become a material term of the tenancy or that the landlord could not revoke use on the basis of estoppel. D.M. confirmed that there is no written agreement but the tenants have been given copies of the Park Rules.

D.M. responded to the tenants counsel, confirming she had no involvement in the sale, lease or any agreements made with the tenants prior to 2005. D.M. confirmed that when she began to assist her father in 2005 the boat shed was in place and the parking was in use. D.M. confirmed that the tenants were not given any written instructions regarding the shed and parking.

On November 8 and 9, 2016 the tenants sent D.M. an email setting out the problems they were having with the new Park owners in relation to the shed and parking. The tenants wrote that D.M. knew about the arrangements with her father. On November 9, 2016 D.M. wrote that she was sorry the tenants were stressed but that Park is under new ownership and she hoped the situation could be cleared up with them.

The landlord referred to section 32 of the Act. The landlord has the right to establish Park Rules. The landlord said the letters from the previous tenants show that it was

those tenants who gave permission for parking, not the landlord. Counsel for the tenants referenced those letters, to establish that the previous tenants confirm they parked alongside the tenants. They did not give permission.

The landlord stated that the tenants were allowed to park in the area during their employment but when the employment ended they were to cease use of that parking area.

The landlord asked if all evidence supplied would be reviewed. I explained that if there were documents the landlord wished to reference as critical to their submissions they should reference those during the hearing so the other party could respond.

The current Park manager, D.C. testified that he has lived in the Park for over 30 years. All parking in the Park is to the right of homes on the sites. D.C. lived in the Park when the boat shed was built. Upon questioning by the tenants' counsel D.C. confirmed there was an embankment along the right side of the tenants' site. Some questioning occurred in order to establish if D.C. knew how much space existed between the home and the embankment. D.C. confirmed that a shed was built up against the embankment. D.C. confirmed that he was not party to any agreement that may have been made between the Park owner and the tenants.

The landlord supplied a copy of a letter sent to the tenants, dated September 10, 2016 in which the landlord sets out the tenants' violation of the Park *Regulations*. The tenants are directed to refrain from parking on the street as well as site #50. The tenants were directed to remove both storage sheds that are adjacent to the front door of the home as well as a shed on lot #50.

The tenants responded on September 29, 2016. On October 17, 2016 the landlord replied requesting evidence of previous arrangements made with the prior owner. The tenants were told that they may not park on common area adjacent to their trailer. The tenants were directed to park only on their site.

Emails communication between the tenants' son and the landlord discuss what the tenants say is an attempt to change the boundaries of the sites after a period of 35 years. The son writes that the rod placed in the ground by the landlord is not legal. The tenants' son points out that parking was never possible along the other side of the home, due to the embankment. The landlord responded that the tenants should provide proof the metal rod had not been in place for more than a few weeks. The landlord writes that as new owners they have the right to ignore the previous permission but had not done so until now. The landlord now wished to have some proof the previous owner had given the tenants permission to park on site #50. The tenants are warned their vehicles will be towed.

A November 21, 2016 letter in the landlords' evidence, written by the current Park manager, D.C. indicates that on October 13, 2016 D.C. measured the lots and "placed a steel peg to signify the legal boundary of each lot." D.C. writes that he spoke with Mr. F.T. who told him that permission had not been given allowing the tenants to erect the boat shed and plant trees on lot 50. Mr. F.T. had said it was "easier to overlook the boat shed until the property was needed."

Analysis

There is no dispute that since 1985 the tenants have parked alongside their home, adjacent to site #50. This was confirmed by the landlord.

There was no dispute that since 1991 or 1992 a boat shed has been present on the area used by the tenants to park, adjacent to site #50.

The new owners of the Park have written that they do not need to respect any past agreements made and that it was past tenants of site #50 who provided approval for the parking arrangement, not the Park owner at the time. I have rejected these submissions based on the written evidence that supports sharing of parking space; not that any permission was given by other tenants. There is also no evidence before me that the parking was provided as part of an employment agreement and could be removed once employment ended.

From the evidence before me I find on the balance of probabilities that the Park owner Mr. F.T. was well aware of the parking arrangements that were in place from the time the tenants purchased their home in 1984, when he owned the Park. I also find that the Mr. F.T. was aware of the presence of the boat shed. There was no evidence before me that at any time over the next 21 years anything was said to the tenants or that any written notice was issued by the Park owner that would suggest the tenants were not entitled to the use of the property alongside their home or that they must remove the boat shed. There was also no indication that the tenants could have parked anywhere but alongside lot #50, as an embankment ran along the other side of their home.

The single conversation that the parties agree took place in 2005 between the tenants and Mr. F.T.'s daughter fails to convince me that the tenants were placed in a position where they must cease use of the property alongside lot #50. D.M. confirmed that she had no involvement in any agreements that may have been made with the tenants. The only knowledge D.M. had was that her father had told her he did not want the tenants to use that property.

The tenants argued that the use of the parking area is a material term of the tenancy that cannot be unilaterally removed by the landlord. The tenants submitted that the parking and use of this property was a standard term of the tenancy. At the time this tenancy commenced the Act, established in 2002, was not in place. This Act replaced the previous Residential Tenancy Act of 1996. Once the current Act came into force all tenancies for manufactured homes were guided by the schedule of terms set out in the 2003 Regulation.

Standard terms are defined in the Act as:

> ***"standard terms"*** *means the standard terms of a tenancy agreement prescribed in the regulation.*

Section 1 and 2 of the standard terms set out in the Regulation provides:

> *(1) The terms of this tenancy agreement and any changes or additions to the terms may not contradict or change any right or obligation under the* Manufactured Home Park Tenancy Act *or a regulation made under that Act, or any standard term. If a term of this tenancy agreement does*

contradict or change such a right, obligation or standard term, the term of the tenancy agreement is void.

(2) Any change or addition to this tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant. If a change is not agreed to in writing, is not initialed by both the landlord and the tenant or is unconscionable, it is not enforceable.

From the evidence before me I find that from the start of this tenancy parking was provided to the tenants as it has been used for the duration of the 32 year tenancy. While there was no requirement to sign a tenancy agreement in 1984, I find that effective in 2003 the parties were bound by the standard terms set out in the Regulation. The parties were then required to observe the terms that had been in place since the tenancy came into force and could only change a term by agreement.

There was no evidence before me that the parties signed agreeing to any change to the terms of the tenancy agreement. Therefore, I find that in the absence of any such agreement allowing the landlord to rescind the use of the parking area that the landlord is prohibited from interfering with the tenants' use of the parking area that has been used for the past 32 years. A new owner has no right to impose terms unless the tenants sign agreeing to change or add terms.

Therefore, I find that the tenants are entitled to continue to use the parking area, as they have throughout the tenancy. The cedar shrubs and boat shed may remain. The effective border of the parking can easily be established by the line of cedar shrubs planted by the tenants. I find that the metal posts installed by the current Park manager have no legal weight or impact on the use of the parking area by the tenants.

As the tenants' application has merit I find the tenants are entitled to deduct the $100.00 filing fee from the next months' rent due.

The landlords' application is dismissed.

Conclusion

The tenants may continue using the parking area as a standard term of the tenancy. The tenants are not required to remove the boat shed or cedar shrubs.

The landlords' application is dismissed.

The tenants may deduct the filing fee from the next months' rent due.

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: December 28, 2016

Residential Tenancy Branch