



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FF

Introduction

This was a hearing with respect to the tenants' application for an order that the landlord comply with the *Manufactured Home Park Tenancy Act*, Regulation or tenancy agreement. The hearing was conducted by conference call. The tenants attended. The landlord attended with his agent and with legal counsel. The hearing was conducted by conference call.

Issue(s) to be Decided

Should the landlord be ordered to comply with the *Manufactured Home Park Tenancy Act*, Regulation or tenancy agreement?
Are the tenants entitled to any order relief?

Background and Evidence

The rental unit is a pad in the landlord's manufactured home park in Aldergrove. The tenancy began in 1993. There have been several prior dispute resolution proceedings with respect to this tenancy. The file numbers with respect to past proceedings are noted on the cover page of this decision.

In the application for dispute resolution the tenants framed their claim thusly:

Landlord conducted survey creating a new site boundary with an additional 3 – 8 feet onto our site 20B claiming out belongings and intending to demolish our shed with our belongings in it. Landlord is forcing us to move after we have been renting site 20B for 23 years to place a new mobile home onto site 21B that doesn't even fit city bylaws.

Seeking

1. To be allowed to keep what we were renting already including our shed on site 20B and allowing us to have our deck back.
2. We would like access to field notes from the 1983 survey and the recent survey.
3. Right for second opinion on the survey since landlord's surveyor was relying on scaling information from 1983 while we were renting out site 20B from 1993 and to come to a decision on the site boundary to be decided by the arbitrator.
4. Reimbursement for any damages caused to us, our site, shed and our belongings on site 20B by the landlord and his unprofessional workers hired during the dispute.
5. Landlord to comply and respect with the tenancy agreement section 14 stating 'the manufactured home pad (site is the tenant's home and the tenant is entitled to privacy, quiet enjoyment and to exclusive use of the manufacture home pad (site)'
6. Reimbursement of filing fee

The site boundaries of the tenant's manufactured home site have been the subject of discussion in past decisions. The tenants alleged at a hearing on June 27, 2016 that the site map for the manufactured home park is incorrect. In that proceeding, the landlord claimed that the tenants have rented the vacant site adjacent to theirs and have constructed a shed and a fence that encroaches upon the adjoining site. The tenants were evicted from the adjacent site and they no longer have any rights to occupy the site; the landlord has the right to possess the site and intends to place a manufactured home on the site. The tenants contend that the site map for the manufactured home park is inaccurate and the site is smaller than shown on the map.

In the June 29, 2016 decision the arbitrator made the following finding:

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.

The arbitrator ordered the tenants to remove a fence and storage container that was constructed or placed without the landlord's written approval.

The tenant and the landlord filed further applications for dispute resolution and a hearing was conducted by conference call on October 26, 2016. In a decision dated November 1, 2016 and amended December 14, 2016 the arbitrator made the following finding:

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.

The arbitrator made the following orders:

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.

The landlord has caused the surveyor who conducted the 1983 survey to conduct a new survey. The survey was completed on January 5, 2017. The landlord delivered the survey certificate to the tenants on January 10, 2017.

The tenants have refused to accept the survey results and filed this application on January 11, 2017. The tenants submitted 101 pages of new evidence on February 7, 2017. The evidence included a form of survey that was prepared at the request of the tenants dated February 1, 2017. The tenants' evidence was not accepted and was specifically excluded by me at the hearing on February 8, 2017 because it was late and because it was not the survey ordered by the arbitrator in the November 1st decision.

Analysis

The tenants' application is an attempt to re-litigate matters dealt with in previous proceedings. The November 1st decision, as amended, ordered that a survey be conducted by the surveyor who performed the 1983 survey. I find that the survey ordered was to be determinative of the boundary dispute between the parties. The tenants are not happy with the outcome, but I find that they are bound by the result; they may not endlessly re-litigate this dispute in hopes that they will eventually achieve an outcome that pleases them.

I find that the survey obtained by the landlord submitted as evidence and dated January 5, 2017 establishes the boundaries of the tenants' manufactured home site. The tenants' application for the various remedies set out above is dismissed without leave to reapply.

In his written submissions the landlord requested several orders, including an order that the tenants comply with the survey, remove structures, debris and possessions placed on the adjacent lot and, among other remedies, an order ending the tenancy. The landlord has not filed his own application; if the landlord wishes to pursue any of the

remedies claimed, he will have to file an application for dispute resolution and may have to give appropriate Notices before so doing.

Conclusion

The tenants' application is dismissed without leave to reapply. The tenants' request to recover the filing fee is dismissed as well.

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: February 28, 2017

Residential Tenancy Branch

