



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") for "Other" issues.

Both parties appear for the hearing. However, only the Landlord and the male Tenant provided affirmed testimony. No issues in relation to the service of the Landlord's Application and the exchange of evidence prior to the hearing were raised. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

Issue(s) to be Decided

The Landlord explained that he had attempted to resolve a dispute he was having with the Tenants regarding their use of land adjacent to the rental site which proved to be unsuccessful. As a result, the Landlord now seeks to have the matter resolved in this hearing and requests that Tenants cease to use the adjacent lot next to the rental unit, pay increased rent to use it, or continue to take care of it with the understanding the Landlord may give a written notice to use it for the Landlord's own use. Therefore, the issues to be decided are:

- Is the use of the lot adjacent to the rental site part of the tenancy?
- Can the Landlord impose restrictions and conditions on the use of the lot adjacent to the Tenants' rental site?

Background and Evidence

The parties did not dispute that the Tenants started to rent the rental site on the manufactured home park (the "Park") in 1996 on a month to month basis. The agreement to rent the site was an oral agreement between the Tenants and the previous landlord. In September 2011, the Landlord took over the Park and asked the residents to sign tenancy agreements for their tenancies. On December 26, 2011, the

Tenants signed a written agreement with the Landlord for the rental site for rent payable in the amount of \$185.00 on the first day of each month. This amount has since increased to \$215.00 per month.

The Landlord testified that when he took over the Park he had a survey done to denote each of the rental sites located in the Park. This was provided into evidence and the Landlord pointed to Lot D which is adjacent to the Tenants' rental site. The Landlord pointed out that Lot D and three other lots around the park had been designated as Park areas which had over time been taken over and used by residents occupying the adjacent lots.

The Landlord testified that he was able to reach agreement with three of the residents in the Park as to how these designated sites would be used. These signed agreements were provided into evidence and show that the sites would be cared for by the adjacent tenants but the Landlord could use the property after providing written notice to do so. However, the Tenants were not agreeable to any solution with respect to their use of Lot D adjacent to the rental site.

The Landlord testified that the four areas were originally designated for Park use such as snow and equipment storage and space for new rent sites. The Landlord provided photographs of a display board which denotes each site with a number in a black box. The Landlord pointed out the areas that were not currently occupied by a manufactured home and in particular Lot D which originally had a sticker denoting it as a site but this had been removed.

The Landlord then stated that he had visited the previous landlord who was elderly where he spoke to him at length about what had been agreed with him and the Tenants. The Landlord testified that the previous landlord informed him that Lot D was never part of the site the Tenants currently rent and that it was intended for use by a mobile home. However, the lot was left empty due to flooding concerns as it abuts a river.

The Landlord provided a letter dated June 25, 2016 which detailed what the previous landlord had explained to him. The Landlord had written the letter and asked the previous landlord to sign it. The letter was also signed by a witness who was also a resident at the care facility the previous landlord was currently staying at. The Landlord testified that the witness signed the letter he had prepared to verify what the previous landlord had explained to him.

The Landlord also confirmed that when he signed the tenancy agreement with the Tenants in December 2016, there is no mention on the written agreement about whether the use of Lot D was excluded or included as part of this tenancy.

The Tenant stated that the Landlord's motive for bringing this Application was because the Landlord's request for voluntary rent increases was refused. The Tenants provided the file number for a previous hearing held in July 2016 with the same parties where the Landlord was attempting to terminate the Tenants' use of Lot D by claiming it was a service or facility. This argument was rejected by the previous Arbitrator and the Landlord's Application was dismissed.

The Tenant stated that Lot D has always been part of the rental site. The Tenant testified that Lot D has a fence going across it which prevents access to and from the lot and that this fence was put up by the original owners prior to 1981. The Tenant explained that his father rented the rental site from 1981 to 1996 and used Lot D which was part of the tenancy as agreed with the previous landlord. The Tenant's father provided a signed letter to this effect.

The Tenant explained that they use Lot D for their exclusive use to store their boat and they have a shed on it and have planted trees and bushes on it which is part of the rental site.

In response to the Landlord's letter signed by the previous landlord, the Tenant explained that they also visited the previous landlord at the care facility where they discovered that he was not of sound mind. They also discovered that the name of the witness had been spelt incorrectly.

The Landlord confirmed that he had written the witness's name incorrectly but the witness and the previous landlord signed the letter. The Tenant disputed this citing that the letter is not credible and cannot be believed as there is no way to verify that this is what the previous landlord had said.

The Tenants provided statements from their neighbors on lot 20 who confirm that the Tenants have always had use of Lot D as part of their rental site for which they pay rent for.

Analysis

I have carefully considered the evidence of both parties before me and I make the findings as follows. Section 14 of the *Manufactured Home Park Tenancy Act* prevents a

party from making a unilateral change to a tenancy agreement. In this case, the parties dispute whether the Tenants' use of Lot D is part of the rental agreement and is covered by their monthly rent.

Firstly, I accept the evidence before me that the fence on Lot D to enclose it into the rental site was erected by the previous tenants of that rental site and that this was done many years ago.

The Landlord relies on a letter which he testified was signed by the previous landlord and a witness stating that Lot D was not intended to be part of the rental site. I find the Tenants have presented sufficient evidence to place doubt on the validity of this evidence. This is because both parties confirmed that the previous landlord is an elderly gentleman currently in a care facility. Therefore, if the previous landlord was unable to complete the statement himself, it would have been prudent and essential for the Landlord to have gathered such vital evidence in another manner, such as a notarized statement from the parties signing the letter or making them both available to give direct testimony for this hearing. Therefore, I have doubts about the validity of this document and place little evidentiary weight to it.

Policy Guideline 11 on the amendment and withdrawal of notices to end tenancy provides guidance on the issue of waiver. In particular, it states:

"There are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights. Implied waiver can also arise where the conduct of a party is inconsistent with any other honest intention than an intention of waiver, provided that the other party concerned has been induced by such conduct to act upon the belief that there has been a waiver, and has changed his or her position to his or her detriment. To show implied waiver of a legal right, there must be a clear, unequivocal and decisive act of the party showing such purpose, or acts amount to an estoppel."

[Reproduced as written]

Estoppel is a legal principle that bars a party from denying or alleging a certain fact owing to that party's previous conduct, allegation, or denial. The rationale behind estoppel is to prevent injustice owing to inconsistency.

Based on the foregoing, I find the letter from the previous landlord only shows that there was no intention for the Tenants to use Lot D. Even though I doubt the validity of the previous landlord's letter, it is likely that the previous landlord would have been aware of the use of Lot D and the fence that was erected on it by the occupants of the rental site since this was in existences over the course of many years. Therefore, if this was contrary to the agreed intention, then it would have been expected that the previous landlord would have taken action to deal and remedy the issue at that point. I find there is insufficient evidence before me that this occurred. As a result, I am only able to conclude that the previous landlord allowed the previous tenants and the current Tenants to use Lot D as part of their tenancy for a significant period of time that made it clear that the use of Lot D had effectively become part of the tenancy. Therefore, I find the Landlord is now estopped from enforcing any such agreement to the contrary.

In addition, I find that if the Landlord felt that Lot D should not have been part of the Tenants' tenancy, then it would have been prudent for the Landlord to have defined this in the tenancy agreement that was signed by the Tenants in December 2016. I find that the tenancy agreement does not provide for the exclusion of the Tenants' use of Lot D as part of the tenancy which was being used by the Tenants at the time the agreement was entered into and signed.

Conclusion

I find the Landlord has failed to provide sufficient evidence to show that the Tenants' use of Lot D is excluded and does not form part of the tenancy of the rental site. As a result, I dismiss the Landlord's Application without leave to re-apply.

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: March 15, 2017

Residential Tenancy Branch