Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTCAN PROPERTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, OLC, RP, RR, O, FF

Introduction

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

- an order regarding a disputed rent increase, pursuant to section 34; and
- an order requiring the landlord to comply with the *Act*, *Manufactured Home Park Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 55;
- an order requiring the landlord to perform repairs to the manufactured home site ("site"), pursuant to section 27;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 58;
- other unspecified remedies; and
- authorization to recover the filing fee for this application, pursuant to section 65.

The landlord's agent JW ("landlord"), the tenant and the tenant's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the director of the landlord company named in this application and that he had authority to speak on its behalf at this hearing. The tenant confirmed that his agent, who is his daughter and lives at the manufactured home ("home"), had permission to speak on his behalf at this hearing. This hearing lasted approximately 107 minutes, in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 81, 82 and 83 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package.

The tenant did not provide testimony regarding the "other" remedies sought in this application. Accordingly, this portion of the tenant's application is dismissed without leave to reapply.

Issue to be Decided

Is the tenant entitled to an order regarding a disputed rent increase?

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

Is the tenant entitled to an order requiring the landlord to perform repairs to the site?

Is the tenant entitled to an order to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The tenant's agent testified that this month-to-month tenancy began on May 1, 2008 with the former two landlords and a written tenancy agreement was signed by both parties. A copy of the tenancy agreement was provided for this hearing. The landlord testified that he purchased the manufactured home park ("park") on April 1, 2016 and assumed this tenancy. Monthly rent in the current amount of $288.10 is payable on the first day of each month. The tenant and his agent continue to reside at the site. The tenant owns the home and rents the site from the landlord.

The tenant disputes the effective date on the landlord's Notice of Rent Increase, dated April 18, 2017 ("NRI") indicating that it was mailed to on May 1, 2017 and cannot be effective until December 1, 2017, rather than August 6, 2017, as indicated on the NRI. The tenant does not dispute the amount indicated on the notice. The tenant's agent said that clause 25 of the tenancy agreement indicates that any NRI is to be effective six months from the date it is given. She stated that it is not the standard three months

as indicated in the *Act*, which is only a minimum standard, because the parties agreed to six months in the written tenancy agreement.

The landlord disputes the tenant's claim, stating that the NRI is effective in three months on August 6, 2017, because section 35 of the *Act* takes precedence over the tenancy agreement, which is an old document.

The tenant's agent claimed that the home is sinking 12 inches and the site underneath needs to be fixed due to drainage issues in order for the home to be lifted. The tenant provided photographs to support this claim. The tenant's agent said that the door frames, doors and skirting on the home have to be replaced but she does not have any estimates for the cost. She stated that the two surrounding neighbouring homes have the same issues and provided statements from both residents.

The landlord disputes the tenant's claim, saying that the tenant has failed to perform proper maintenance on her home and there are no issues with the neighbouring homes as per the photographs provided by the landlord. The landlord stated that the tenant's trailer is only sinking because the tenant did not install proper gutter downspouts in the back of the home in order for water to properly drain from the back, rather than the front, which is causing the sinking in the front. The landlord provided a letter, dated June 20, 2017, to this effect from a construction worker and home builder. The landlord claimed that the tenant is responsible for repairs to the home because the tenant caused the sinking issues.

The tenant seeks a rent reduction of $100.00 per month from May to December 2017, because of the noisy and disturbing construction being conducted by the landlord in 2016 and 2017. The tenant's agent claimed that the work began around late spring or May 2016 and ended in November 2016 and then began again from late spring 2017 until now. She said that her home shakes, her son cannot play outside because there are no gates separating the construction zone, and it is too noisy to have guests over to talk. She stated that the construction starts before 7:00 a.m. and provided letters from other park residents saying that the work begins before 8:00 a.m., as well as photographs of the area. She claimed that it affects her ability to do school work from home so she goes to the library instead, she has stayed at a friend's house with her son to avoid the noise, and her and her son's sleep has been affected. She also explained that her truck has been splattered with mud from the construction zone and pointed to the landlord's invoice for $30,000.00 as showing the amount and scale of the work being completed.

The landlord disputes the tenant's claim, stating that there was never six to eight months of work at the park as claimed by the tenant. He provided the invoice, dated September 30, 2016, for such work in the amount of $29,380.05 which shows the limited hours of the work on a breakdown invoice, dated November 15, 2016. He provided a signed letter, dated July 4, 2017, from the contractor indicating the work hardly exceeded eight hours per day and began between 8:00 and 9:00 a.m., as well as letters from other park residents indicating that the work started between 8:00 and 9:00 a.m. The landlord maintained that the tenant's agent was unsure of the dates and the construction was not near the tenant but only in a specified, limited area.

The tenant's agent said that the landlord has issued new park rules that are contrary to her tenancy agreement and ability to have a fence, pool and shed at the site. She stated that the landlord wants her to remove the above amenities. The landlord said that the notices for the tenant to remove the above amenities is consistent with the park rules, the tenant's fence infringes on the landlord's access to a utilities corridor, and the tenant is upset because she has difficulty following the rules. The landlord claimed that the rules are for the benefit of the park, since he intends to clean it up.

Analysis

Burden of Proof

Pursuant to section 60 of the *Act*, when a party makes a claim for damage or loss the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the tenant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Rent Increase

Section 35 of the *Act* states the following (my emphasis added):

> *Timing and notice of rent increases*

35 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase ***at least 3 months*** *before the effective date of the increase.*

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

I find that the landlord's NRI is effective beginning on December 1, 2017. The landlord served the notice to the tenant on May 1, 2017, which is deemed received by the tenant on May 6, 2017, five days after the registered mailing. The tenant confirmed receipt of the NRI but did not provide the exact date of receipt. The NRI must be served and received on the day before rent is due. In this case, because the notice is deemed received on May 6, 2017, after rent was due on May 1, 2017, the full six months is counted from June 1, 2017 until November 30, 2017. Therefore, the new rent is due on December 1, 2017.

The parties contracted to extend the three-month notice period to a six-month notice period in the original written tenancy agreement. The written tenancy agreement was not modified by the landlord when he purchased the park. The *Act* states that the notice period must be *at least* three months which is a minimum requirement. The parties cannot contract outside of the *Act* as per section 5; therefore, they can contract to a longer notice period, not a shorter notice period, if they choose to do so. I find that the six month notice period for rent increases in clause 25 of the tenancy agreement is not contrary to the *Act* and is enforceable.

Although neither party raised an issue regarding the amount in the NRI, I find that the amount has been rounded to a higher number, which is not permitted by the *Act*. The allowable amount can only be the exact amount or rounded down, not rounded up. Therefore, the increase of 3.7% under the Regulation for 2017 on $288.10 is $10.65 (rounded down from 10.6597), not $10.66. Accordingly, the tenant owes a total of $298.75 per month (not $298.76) beginning on December 1, 2017.

I order that the monthly rent for the tenant's manufactured home site is $298.75 beginning on December 1, 2017 and for the remainder of this tenancy, until it is legally changed in accordance with the *Act*.

The landlord must abide by clause 25 of the original written tenancy agreement if providing any future rent increases to the tenant by providing at least six months' notice to the tenant, unless the parties otherwise agree in writing or a new written tenancy agreement is signed by this landlord and the tenant.

The tenant's agent confirmed that she has only been paying the current amount of $288.10 per month for rent to date and therefore, she is not entitled to any rent reimbursement from the landlord for overpayment of rent. If the tenant has paid above $288.10 per month for rent to date, the tenant can deduct any overpayment from future rent owed to the landlord.

Repairs

I dismiss the tenant's claim for repairs to be done by the landlord to the tenant's home or the site. I find that the tenant failed to provide sufficient evidence that the landlord is responsible for such repairs. The landlord disputed the tenant's claims and provided conflicting evidence and testimony that the tenant's home was sinking due to the tenant's negligence and failure to properly maintain the home.

The tenant's agent relied on a letter, dated April 24, 2017, which was handwritten by someone who she said provided a free quote. The letter is not on official company or business letterhead. It does not indicate the qualifications (such as education) of the person providing the "opinion" of what needs to be done to the home or the site. It does not indicate where and when experience was previously gained or the types of "buildings" evaluated in order to provide such an opinion stating only: "I have over 7 years experience in raising, moving and leveling buildings." The author of the letter did not testify at this hearing to support the statement and the landlord did not have an opportunity to cross-examine that person. It is the tenant's burden to prove, on a balance of probabilities, that the landlord has wilfully or negligently caused the tenant's home to sink such that it requires repairs to the home or site; I find that the tenant did not meet that burden.

Rent Reduction

I dismiss the tenant's claim for a rent reduction without leave to reapply. I find that the tenant failed to justify the amount of $100.00 per month that was being claimed. I find that the tenant delayed in filing this claim by at least one year, stating that the noise began around late spring/May 2016. The tenant's agent said that she was not aware of her rights but ignorance of the law is no excuse. Clearly the noise and loss of quiet enjoyment was not significant enough for the tenant to make an application until one year later when there were other issues with the landlord.

I also find that the tenant failed to provide medical records or work/school records to show that the tenant's agent or her son suffered medical, school or work losses, due to the construction work. I find that the tenant failed to provide the applicable local bylaws or to show that the landlord's construction company violated specific bylaw hours by performing construction prior to 7:00 or 8:00 a.m. I also note that a reasonable level of noise is to be expected with any construction occurring in the area and this construction to expand and improve the park is for the benefit of the tenant and all other tenants in the park.

Orders to Comply

Section 32 of the *Act* states the following (my emphasis added):

> *Park rules*
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> *32 (1) In accordance with the regulations, a park committee, or, if there is no park committee,* ***the landlord may establish, change or repeal rules for governing the operation of the manufactured home park.***
> *(2) Rules referred to in subsection (1) must not be inconsistent with this Act or the regulations or any other enactment that applies to a manufactured home park.*
> *(3) Rules established in accordance with this section apply in the manufactured home park of the park committee or landlord, as applicable.*
> ***(4) If a park rule established under this section is inconsistent or conflicts with a term in a tenancy agreement that was entered into before the rule was established, the park rule prevails to the extent of the inconsistency or conflict.***

I dismiss the tenant's application for the landlord to stop issuing notices to the tenant to remove the fence, pool and shed from the site. The tenant's agent stated that these

park rules are contradictory to the tenancy agreement where she was allowed to have a pool and she always had a fence and shed. She said that someone at the Residential Tenancy Branch ("RTB") advised her that park rules have to be agreed upon by the landlord and tenant and at least two weeks' notice must be given. She did not provide the section of the *Act* to which she was referring.

The landlord is entitled to establish, change or repeal rules at any time and these rules prevail over the tenancy agreement if there is any inconsistency or conflict. No agreement from the tenant is required in order to make, change or repeal rules. The tenant has also been given notice from the landlord to remove the above items. Therefore, I cannot issue an order to stop the landlord from changing park rules or from revoking the orders to the tenant to remove her fence, pool or shed.

As the tenant was mainly unsuccessful in this application, I find that the tenant is not entitled to recover the $100.00 application filing fee from the landlord.

Conclusion

I order that the monthly rent for the tenant's manufactured home site is $298.75 beginning on December 1, 2017 and for the remainder of this tenancy, until it is legally changed in accordance with the *Act*.

The remainder of the tenant's application is dismissed without leave to reapply.

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: August 09, 2017

Residential Tenancy Branch