



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBUS CENTENNIAL HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested an Order that the Landlord comply with the *Residential Tenancy Act*, the *Regulation* or the tenancy agreement and monetary compensation equivalent to the amount required to replace a swing set.

The hearing was conducted by teleconference on August 9, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

During the hearing the Tenant confirmed that she does not want to pursue the monetary claim; rather she simply wants the opportunity to reinstall a swing set.

Issue to be Decided

1. Should the Landlord be ordered to comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and confirmed that this tenancy began March 15, 2012.

The Tenant rents a two bedroom townhouse in a subsidized housing complex.

The subject matter of the dispute relates to the Tenant's desire to reinstall a swing set on her property.

The Tenant sought the sum of \$309.12 representing the cost to replace the swing set which she testified was removed by the Landlord.

The Tenant confirmed that she sought an Order pursuant to section 28(d) of the *Residential Tenancy Act* as she wishes to re-install her swing set in the grassy area behind her townhouse and which she claims is related to her right to quiet enjoyment. She confirmed this area is a common area as while it is fenced it is not separated by unit.

The Tenant testified that she had the swing set for three years. She stated that two years ago the Landlord asked her to move her trampoline and she complied. She said they told her she could have the swing set at that time.

The Tenant testified that on June 9, 2017 the Landlord instructed her to remove the swing set by June 13, 2017. She confirmed that she was not able to do it herself and was aware the Landlord was going to attend and dismantle it. She also confirmed she told them to dispose of it as she did not want it to remain on her property in a dismantled state.

The Tenant stated that she does not believe the swing set is an "alteration" as provided for in the tenancy agreement.

The Tenant also stated that she disputes the Landlord's claim that her swing set is a safety issue. She noted that another neighbour has a tin fishing boat against the wall which she believes is actually a safety issue. She also stated that none of her neighbours have complained about her swing set. The Tenant also submitted that the Landlord has cited safety and liability concerns yet all of the Tenants have signed liability waivers with respect to common areas.

The Tenant stated that when her swing set was taken down she called the Landlord and asked why another tenant was permitted a swing set when hers was dismantled and discarded; she noted that shortly thereafter that other tenant was served a notice to remove their swing set.

The Tenant stated that it is nice to have a shaded area where her daughter can play while she makes dinner. She further stated it gives her child the opportunity to play with other children.

The Tenant stated that as soon as A.M. was hired as the Maintenance Supervisor he started asking people to remove trampolines.

Introduced in evidence was a statement from A.M. wherein he writes as follows:

“On June 8, 2017 I instructed J. to post notice to [rental unit address] to have swing set removed in preparation of grounds to allow tree removal, stump grinding, root removal and re-sodding of that area.”

The Tenant confirmed the tree was removed last summer and the stump was levelled this summer. She further stated that the Landlord did a really good job of removing the stump although she filled the hole in and planted grass.

In response to the Tenant's claim L.M. stated that according to his records the swing set was originally installed in 2015. He stated that why it wasn't handled more quickly was due to a “miscommunication” between him and the maintenance staff; he said that he thought the swing sets were all removed last summer when the trees were removed.

He also stated that all other swing sets and trampolines have been handled in the same manner. He confirmed it is the Landlord's position that it is in the common area and it violates her tenancy agreement and in particular paragraphs 19 and 20 which read as follows:

19. ALTERATIONS, DECORATIONS AND OTHER USE OF PREMISES AND PROPERTY. Unless prior WRITTEN CONSENT is given by the Lessor, the Residents shall not

- a) place on or affix to the Premises or the Property any placard, notice or sign, or
- b) affix to the Premises or the Property, or erect thereon any radio or television equipment or any other object whatsoever; or
- c) make any structural alterations to the Premises or the Property; or
- d) paint, paper, carpet or decorate the Premises or Property; or
- e) repair or service automobile or other vehicles, recreation vehicles, or boats on the Property, including the parking areas, or in the Premises; or
- f) install or store heavy appliances or equipment in the Premises or on the Property; or
- g) use any other drapes, curtains and curtain rods where these have been supplied by the Society.

20. COMMON AREAS. The Tenant shall take all reasonable steps to ensure that the Residents shall not abuse common areas of the Property but shall use them prudently, safely and equitably; and shall conform to all notices, rules or regulations posted on or about the Property concerning the use of common areas, including the use of any laundry room, recreation room and facilities, parking areas, or storage area and including restriction of use to Residents only, and restrictions on use by children. All such use shall be at the risk of the Residents.

He stated that it is a concern for ongoing maintenance, such as lawn mowing, as well as safety as it is accessible to anyone. L.M. stated that he believes the swing set is not prudent, safe or equitable. He further stated that the swing set could be used by anyone. He also stated that it is concerning for the maintenance staff to have to mow around the swing set.

He also noted that the “general appearance” is affected by these items, and the swing set blocks a fire exit.

L.M. confirmed that the rental property does not have a play area although there is a park next to the property.

Photos submitted by the Landlord show a swinging chair. L.M. confirmed that the Landlord was not concerned with tenants using such chairs, provided that they move them off the common areas when not in use to permit lawn mowing and watering.

In reply the Tenant stated that the Landlord has other complexes where they have parks and as such she does not believe their argument that it is a safety concern is valid.

L.M. noted that they do have other complexes with play areas, and those swing sets are of higher quality and safety approved, and are installed in areas with gravel or wood chips such that lawn maintenance is not an issue.

Analysis

The Tenant applies for an Order pursuant to section 62(3) of the *Act* which reads as follows:

Director's authority respecting dispute resolution proceedings

62 ... (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

The Tenant alleges that the use of a swing set in the common area is protected by her rights under section 28(d) which read as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 28(d) specifically provides that the use of the common area must be reasonable *and lawful*, as well as free from significant interference.

Paragraph 19 of the tenancy agreement specifically provides that the Tenants shall not affix *any object* to the rental premises or property without the *prior written consent* of the Landlord. The Tenant failed to submit any evidence to support a finding that she had such prior written consent as required by the tenancy agreement.

While it would have been preferable for the Landlord to communicate more effectively with their staff and the Tenant when her trampoline was removed, I find this does not create an implied

agreement that the Tenant could keep her swing set and in any case does not meet the requirements of paragraph 19 of the tenancy agreement.

I find the swing set to be such an “object”, and while it is not permanently affixed, the weight of this item (which is necessary for safety reasons), creates a degree of permanence which results in the swing set being affixed for the purpose of the tenancy agreement.

The Tenant clearly wishes to create a safe and enjoyable space for her and her daughter; however, the placement of a swing set in the common area is in violation of paragraphs 19 and 20 of her tenancy agreement.

Further, I accept the Landlord’s evidence that the swing set creates lawn maintenance issues as well as potential safety concerns. In all the circumstances I decline the Tenant’s request that I Order the Landlord to permit the reinstallation of a swing set in the common area adjacent to the rental unit.

Conclusion

The Tenant’s Application for an Order pursuant to sections 28 and 62 are dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 11, 2017

Residential Tenancy Branch