



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Shasta Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OLC; RP

Introduction

This is the Tenant's Application for Dispute Resolution seeking an Order that the Landlord comply with the Act, regulation or tenancy agreement; and an Order that the Landlord make regular repairs to the rental site.

Both parties attended the Hearing and gave affirmed testimony. The hearing process was explained and the parties were given an opportunity to ask questions about the process.

The Tenant served the Landlord with the Notice of hearing documents by registered mail, sent on April 13, 2018. The parties confirmed that they exchanged their documentary evidence.

At the outset of the Hearing, it was determined that the Landlord/Respondent named in the Tenant's Application is the current resident manager and that the Owner/Landlord is a limited company. The Tenant's Application was amended to reflect the name of the Owner/Landlord as Respondent.

Issue(s) to be Decided

Is the fence that was erected between the Tenant and her neighbour's site encroaching on the boundary to the Tenant's site? Is the rock that was placed near the fence also encroaching on the boundary to the Tenant's site? Should the Landlord be ordered to remove the fence and the rock?

Background and Evidence

Much testimony was provided which is not relevant to the Tenant's Application. I have recorded only the relevant testimony in this Decision.

This Tenant testified that the tenancy began on February 1, 2000 or 2001. She stated that there is no tenancy agreement in writing. The Landlord's agent testified that the tenancy began in 2000 and that there was a tenancy agreement but that the Tenant did not sign it and return it to the Landlord at the beginning of the tenancy.

The Tenant and the Landlord both made mention of the Tenant's small back door porch and stairs leading down from the Tenant's home. The Tenant stated that it was her second exit in case of emergency. The Landlord stated that it was on an easement on the Tenant's neighbour's property and that the Tenant could always access her home on that easement for the purposes of exiting in case of emergency, or for the purposes of maintenance or making repairs to her home.

The Tenant gave the following testimony:

The Tenant stated that there used to be a line of hedges between her site and her neighbour's site, but that it was removed in 2007. The Tenant testified that she had put up some "lattice" and wire up against the hedge to dissuade her dog from crossing over into her neighbour's yard.

The Tenant testified that the boundary between her site and her neighbour's site is marked by a "40 inch by 3 ½ foot high green cable box". She provided photographs of the hedge and the cable box, taken in 2002, in support of her submission.

The Tenant stated that she erected a deck in 2010 with the permission of the Landlord and the City. The Tenant provided a drawing of the site plan with the manufactured home and other measurements. The drawing is dated "October 22/10" and contains the following notation:

REVIEWED BY CITY OF KELOWNA INSPECTIONS SERVICES
FORMING PART OF BUILDING PERMIT # 41239 THESE
DRAWINGS SHALL REMAIN ON SITE AVAILABLE TO CITY BUILDING
INSPECTORS

The Tenant submitted that the City requires a five foot minimum clearance between a manufactured home and the site boundary. She stated that the Landlord allowed her

neighbours to erect a fence “against my home, restricting access for maintenance, service (oil deliveries, home and porch repairs etc.) as per city department and original boundary”.

The Tenant stated that the Landlord is now trying to “bring in a new law regarding the trailer property line”. She stated that she does not require 5 feet between her home and the property line, but that she does require the 3 ½ feet that she used to have before the fence was erected.

The Landlord’s agent and witness gave the following testimony:

The Landlord’s agent ML stated that there are “no exact measurements” but that “from her [the Tenant’s] trailer to [the Tenant’s neighbour’s trailer] is 16 feet”. ML submitted that the Tenant removed the hedges without her neighbour’s permission and that the neighbours were upset because the hedges gave them privacy.

ML testified that the Tenant’s neighbours erected a wire chain link fence with the Landlord’s approval, and that it followed the same line that the back of the hedge occupied before it was removed by the Tenant. ML submitted that the Tenant’s side of the hedge was the property line and that her neighbour’s side of the hedge was actually on their side of the line. In other words, the Landlord’s position is that the hedge was entirely on the Tenant’s neighbour’s side of the property line.

ML submitted that the Tenant’s home was located right up against the property line between the two sites and that the “City cannot dictate how far” the manufactured home has to be from the property line between the sites. ML denied that the fence obscured access to the Tenant’s oil tank and stated that, “the delivery man would have to approach the tank from this side to get to hole to fill tank and would have to lift the hose, whether there was a 3 foot area between the fence and [the Tenant’s] trailer or not”.

ML testified that the site plan that the Tenant provided in evidence from when she put in her deck is different from the site plan that the Tenant gave to the Landlord. The Landlord provided their copy of the site plan in evidence.

The Landlord’s witness SF stated that she is one of the Tenant’s neighbours and that they erected the fence because the “existing wooden one was in disrepair”. SF stated that they “followed the existing fence line” when they put in the new chain link fence. SF testified that they had the Landlord’s permission to erect the fence but that they “did not speak to the Tenant about it”.

The Landlord's agent ML stated that the Tenant gave her permission when she wrote a "thank you" card to her neighbours on June 22, 2014, stating "Larry came over and explained new chainlike fencing. Thank you for such a safe fence for my dog and your cats".

The Landlord provided a copy of the current park Rules and Regulations, dated 2004.

The Tenant gave the following reply:

The Tenant acknowledged writing the "thank you" note, but stated that she did not know that her neighbours would be erecting the fence right up against her home and well on her side of the property. She stated that when she realized that they were putting the fence on her side of the property, she tried to stop them but they would not listen to her.

Analysis

The copy of Rules and Regulations provided by the Landlord includes the following, in part:

	<p style="text-align: center;">RULES AND REGULATIONS MARCH 2004</p>	<p style="text-align: right;">N2-</p>
	<p>The Park Manager cannot make any verbal approvals, changes and/or modifications to these Rules and Regulations or any Tenancy Agreements.</p> <hr/> <p>7. FENCES: All fences must conform to the City bylaws and the Rules and Regulations. It is the tenant's responsibility to obtain this information from the City and obtain the proper permits. Permits and plans must be approved in writing by the Landlord prior to fence being constructed. Fences constructed on the site are at the expense of the Tenant and must be maintained at all times.</p> <p>a) Fences Specifications (does not include park perimeter fencing).</p> <ul style="list-style-type: none">i. must be neighbour friendly (same on both sides),ii. not to exceed 4 (four) feet in height across the back and on the sides, to the front on the mobile,iii. not to exceed 3 (three) feet in height across the front,iv. meets color scheme of mobile home.	

The Landlord also provided a copy of "Park Regulations for Requesting Approval of Site Improvements", which includes the following, in part:

Park Management's written approval is required before starting work on any improvements to your site. The following steps are essential:

1. Detailed Plan. Please provide the Park Office with a detailed sketch plan of any building addition or other improvement that you would like to complete on your site, including such improvements as sheds, rock walls and fences. The sketch plan (see example on the back of this form) must include measured distances from adjacent homes, trees and other permanent structures.

2. Setbacks and Infrastructure Access. Improvements must not block access to any of the Park's infrastructure which may be located on the site, such as septic tanks and sewer pipes, water lines, electrical/phone/cable service, and so on. New structures cannot be close to an existing tree, in order to allow sufficient space for the tree to grow. The distance between your home and the neighbours' homes may be subject to a minimum setback requirement under local bylaws, or a minimum setback as determined by Park Management, which is your responsibility to determine. Park Management approval does not imply that you have met bylaw or building code requirements. The approval of surrounding neighbours is also required.

The Site plan provided by the Tenant is identical to the plan provided by the Landlord, with the following exceptions:

1. The Tenant's copy has the City's date stamp and approval on it; and
2. There is a notation on the Tenant's copy, "5' minimum to mobile home space line".

I find that the notation is not particularly helpful. It is not clear to me what it actually means. What is clear, and is evident on both copies of the site plan, is that there is an attachment to the Tenant's home which is on the other side of the fence line. I accept the Tenant's submission that it is a secondary exit in the event of an emergency.

Both parties provided photographs of the hedge that was present at the beginning of the tenancy. The hedge appears to be approximately 2 to 3 feet deep and abuts against the Tenant's home on one side and against a cable box on the other. The Tenant submits that the property line is the edge of the hedge furthest from her home and that the hedge was on her property. The Landlord submits that the property line is the edge of the hedge closest to the Tenant's home and that the hedge was entirely on the Tenant's neighbour's property.

The Tenant had placed lattice up against her side of the hedge and it is this lattice that the Landlord's witness referred to as the "existing wooden one".

Rule 2 of the “Park Regulations for Requesting Approval of Site Improvements” provides, “approval of the surrounding neighbours is also required” when seeking Park Management’s written approval “before starting work”. It is unfortunate that the Landlord does not require the neighbor(s) to sign a form or provide a clear letter of approval/permission which indicates that they have seen the site plan and approve of the improvement. SF’s own testimony was that they did not speak to the Tenant about the fence, contrary to Rule 2.

The parties disagree with respect to the site boundaries; however, it is clear from both parties’ testimony that the Landlord did not comply with Section 12(1)(b) of the regulation, which states:

Terms that must be included in a tenancy agreement

12 (1) A landlord must ensure that a tenancy agreement contains

(a) the standard terms, and

**(b) the boundaries of the manufactured home site
measured from a fixed point of reference.**

(2) The terms set out in the Schedule are prescribed as the standard terms.

[Reproduced as written. My emphasis added.]

I find that the parties have a tenancy agreement and that it contains the terms as set out in the Schedule to the Regulation. I ORDER the Landlord to comply with Section 12(1)(b) of the Regulation by creating a site plan that clearly specifies the current boundaries of the Tenant’s manufactured home site, which must be set out in a manner that provides a boundary which is 16 feet measured from the Tenant’s Neighbour’s deck towards the Tenant’s manufactured home, as clearly shown on the plan provided by both parties,. The boundaries must be clearly established using precise measurements from fixed points on the site. I ORDER the Landlord to provide the Tenant with a copy of this site plan by July 31, 2018.

Only after the boundary has been established can it be determined whether the fence is within the site boundary. Therefore, at this point in time, I cannot determine whether the fence is within the boundary lines and I make no order concerning the fence at this time. The parties are at liberty to seek dispute resolution in the future should the location of the fence remain an issue after the boundary has been established.

Conclusion

I ORDER the Landlord to comply with Section 12(1)(b) of the Act, as described above, and to provide the Tenant with a copy of the site plan by July 31, 2018.

The parties are at liberty to seek dispute resolution in the future should the location of the fence remain an issue after the boundary has been established.

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: June 13, 2018

Residential Tenancy Branch