Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OLC; FF

Introduction

This is the Tenants' Application for Dispute Resolution seeking an Order that the Landlord comply with Section 22 of the Act; and to recover the cost of the filing fee from the Landlord.

Both parties attended the Hearing and gave affirmed testimony.

It was determined that the Tenants mailed the Notice of Hearing documents to the Landlord, via registered mail, on May 4, 2018. The Tenants provided the tracking number for the registered documents. It was also determined that the parties exchanged their documentary evidence.

Issue(s) to be Decided

Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement?

Background and Evidence

This tenancy began on December 2, 2006. The Landlord purchased the manufactured home park on February 21, 2015. Contrary to Section 12 of the regulation, the previous owner did not ensure that the tenancy agreement contained the boundaries of the manufactured home site measured from a fixed point of reference. The Landlord and the Tenants did not enter into a new tenancy agreement when the Landlord purchased the manufactured home park.

The Tenants and their advocate gave the following testimony and submissions:

The Tenants testified that the previous owner ("SG") gave them permission to park their travel trailer and van on the driveway at the south end of their home in a "southern corridor" between their site and their neighbour's site. In addition, SG agreed that they could park a second vehicle in front of their home. The Tenants provided a copy of a letter signed by SG.

The Tenants testified that their site also included a small back yard area and that the south corridor, allowed the Tenants access to the back yard. In 2008, the Tenants were given permission to replace a garden shed at the back of the site and to build a wood storage unit on the south side of their home.

The Tenants stated that, contrary to their tenancy agreement with SG, the Landlord is now taking the position that their site does not include the southern driveway or corridor used to access their back yard and that their tenancy agreement does not include parking. The Tenants stated that they parked in the southern corridor until January of 2018.

The Tenants testified that in early 2017, the Landlord asked them to sign a parking agreement which allowed them to store their trailer on the southern corridor for an additional $25.00 per month from March, 2017 to March 2018. The Tenants stated that they did not wish to cause trouble with the Landlord, so they signed the agreement even though they had been parting there since they moved in and believed it was already part of their tenancy agreement.

The Tenants testified that in November, 2017, the Landlord advised the residents of the Park that he wanted to move more people into the Park and that he would be moving current residents in order to make room. They testified that they told the Landlord that they were seeking legal advice. The Tenants stated that they were concerned because there was no assurance with respect to where they would be moved, whether the Landlord would cover the cost of any damage to their home as a result of the move, or that the new dimensions of their new site would be.

The Tenants testified that they received a Notice of Rent Increase on November 29, 2017. They were concerned because the Landlord did not tick the boxes indicating that the tenancy agreement included parking and recycling services.

On January 5, 2018, the Tenants wrote to the Landlord asking why the Notice did not include parking. The Landlord responded that parking was not included in the

Agreement and that if they did not wish to negotiate an agreement to move their home, they would have to leave the park.

On January 5, 2018, the Landlord asked the Tenants to move their vehicles off their driveway in order to make room for some demolition work the Landlord was doing on the house next door. The Tenants complied with the Landlord's request, but the Landlord has refused to allow the Tenants to move their van and trailer back onto the driveway.

On February 7, 2018, the Landlord parked a bobcat on the Tenants' driveway, blocking access to their driveway. The bobcat was finally moved on April 17, 2018, but it was immediately replaced by a tamping machine.

On April 3, 2018 the Landlord gave the Tenants a "formal warning" by registered mail advising the Tenants that he requires all building and electrical permits for their home. The Tenants believe that this constitutes harassment because there is no valid safety concern with respect to their home.

Between April 16 and April 17, the Landlord also parked a dump truck on the Tenants' driveway.

The Tenants are seeking an Order that the Landlord stop parking his equipment and vehicles on the Tenants' driveway and to stop interfering with the Tenants' right to exclusive use and quiet enjoyment of their property.

The Tenants also seek compensation for not having access to the southern corridor between January 5, 2018 to date and return of $300.00 plus interest for the money they paid for parking.

<u>The Landlord gave the following testimony:</u>

The Landlord submitted that the Tenants signed the parking agreement in 2017 and therefore agreed to pay $25.00 per month for "additional" parking of more than 2 vehicles. He stated that he also provided the Tenants with a new lease agreement in December 2016, but the Tenants did not sign it. The Landlord stated that there are "new people coming in" and that the Tenants need to "pay heed".
The Landlord submitted that part of the reason his equipment is still parked by the Tenants' home is to "stop people from falling into the hole" that was left after he demolished the Tenants' neighbour's pad.

The Landlord stated that a site plan has been created but that he has not provided it to the Tenants yet.

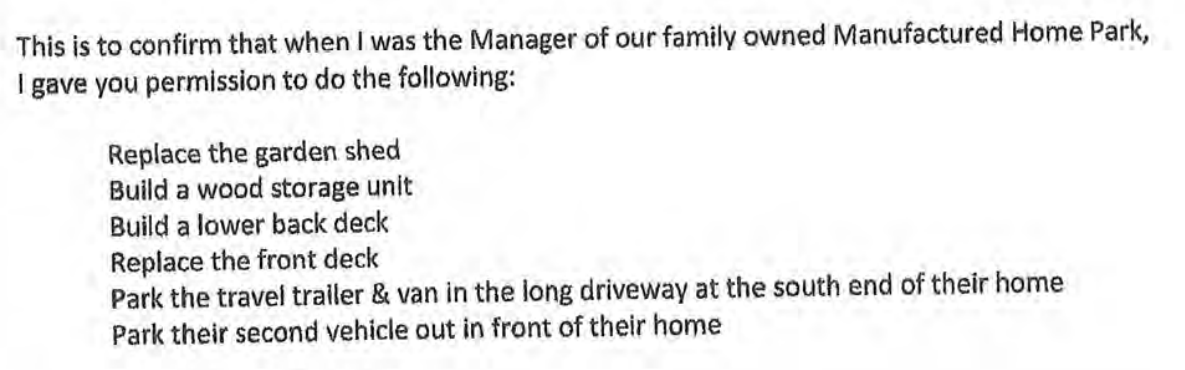
The Landlord questioned the Tenants about the letter provided by SG. He asked if SG wrote the letter or if the Tenants wrote it and then had SG sign it. He also questioned when the letter was written as it is not dated.

The Tenants gave the following reply:

The Tenants stated that they wrote the letter on April 7, 2018, and SG signed it.

Analysis

The letter provided by the Tenants and signed by the previous owner SG provides:



This is to confirm that when I was the Manager of our family owned Manufactured Home Park, I gave you permission to do the following:

Replace the garden shed
Build a wood storage unit
Build a lower back deck
Replace the front deck
Park the travel trailer & van in the long driveway at the south end of their home
Park their second vehicle out in front of their home

It is unfortunate that the previous owner did not comply with Section 12 of the regulation, which requires landlords to ensure that a tenancy agreement contains the boundaries of the manufactured home site measured from a fixed point of reference. It is also unfortunate that the current Landlord did not seek to remedy the situation before he purchased the manufactured home park; however, neither of these issues are the fault of the Tenants.

The Tenants lived in the manufactured home park for more than eight years before the current Landlord purchased the park. I accept that the Tenants were allowed to park their trailer and van in the southern corridor beside their home and that they had access to their back yard through that same corridor. I also accept the Tenants' evidence that they were allowed to park an additional vehicle in front of their home. I find that this was part of their tenancy agreement with the former owner. When the Landlord purchased

the manufactured home park, he inherited the tenancies from the previous owners, along with the tenancy agreements.

The Landlord is warned that a landlord cannot arbitrarily change the size or location of a manufactured home park site. I find that any attempt to do so is unconscionable.

I do not accept the Landlord's submission that parking his equipment on the Tenants' driveway was an effective deterrent to people "falling in the hole". There was no fence or other barrier erected to protect the area, which would be the usual safety method. Based on the oral testimony, the Tenant's documentary evidence and photographs, I find the Landlord's actions to be harassing in nature. **I HEREBY ORDER the Landlord to comply with Section 22 of the Act**, which provides:

Protection of tenant's right to quiet enjoyment

> **22** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> (a) reasonable privacy;
>
> (b) freedom from unreasonable disturbance;
>
> (c) exclusive possession of the manufactured home site subject only to the landlord's right to enter the manufactured home site in accordance with section 23 *[landlord's right to enter manufactured home site restricted]*;
>
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that the southern corridor (as described by the Tenants in paragraph 4 of their Affidavit) is part of the Tenants' site, along with the back yard. The Landlord must remove his equipment from the southern corridor immediately. If he is concerned about safety issues surrounding the hole in the site next door to the Tenants, he should erect a proper safety fence or barrier.

I FURTHER ORDER the Landlord to comply with Section 12 of the regulation and to complete a site plan that clearly sets out the boundaries of the Tenants' manufactured home site measured from a fixed point of reference, and in accordance with paragraph 4 of the Tenants' Affidavit**. I ORDER that the Landlord complete the site plan and provide a copy of the plan to the Tenants by August 31, 2018.**

Policy Guideline 8 defines "unconscionable" as:

Unconscionable Terms

Under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*, a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party.

Terms that are unconscionable are not enforceable. Whether a term is unconscionable depends upon a variety of factors.

A test for determining unconscionability is whether the term is so one-sided as to oppress or unfairly surprise the other party. Such a term may be a clause limiting damages or granting a procedural advantage.

A term may be found to be unconscionable when one party took advantage of the ignorance, need or distress of a weaker party.

I find that parking agreement is unconscionable and therefore is unenforceable. Further to the provisions of Section 55(2) and (3) of the Act, I ORDER the Landlord to refund the $300.00 paid by the Tenants under the parking agreement. I also find that the Tenants are entitled to additional compensation in the amount of $150.00 ($25.00 per month) for loss of use of their driveway for the months of January to June, 2018.

The Tenants' Application had merit and I find that they are entitled to recover the cost of the $100.00 filing fee from the Landlord.

Pursuant to the provisions of Section 65 of the Act, the Tenants may deduct $550.00 from future rent due to the Landlord, calculated as follows:

Return of $300.00 in parking fees	$300.00
Compensation for loss of use of driveway	$150.00
Recovery of the cost of the filing fee	$100.00
TOTAL	$550.00

Conclusion

I ORDER the Landlord to comply with Section 22 of the Act. The Landlord must remove his equipment from the Tenants' driveway immediately.

I FURTHER ORDER the Landlord to comply with Section 12 of the regulation and to complete a site plan that clearly sets out the boundaries of the Tenants' manufactured

home site measured from a fixed point of reference, and in accordance with paragraph 4 of the Tenants' Affidavit**. I ORDER that the Landlord complete the site plan and provide a copy of the plan to the Tenants by August 31, 2018.**

The Tenants may deduct $550.00 from future rent due to the Landlord.

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 28, 2018

Residential Tenancy Branch