



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT OLC

Introduction

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

- authorization to recover the filing fee for this application, pursuant to section 65; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 55.

The tenant was represented by a law student in this proceeding. The named landlord EY is the designated agent for the owner of this property, and who was also in attendance for this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 82 of the *Act*, I find that the landlord was duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 81 of the *Act*.

Issues

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

Is the tenant entitled to recover the cost of the filing fee from the landlord for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on January 28, 2011. A copy of the tenancy agreement was included in the tenant's evidence. At the time of the hearing, the monthly rent was set at \$360.11, but a rent increase would take effect as of May 2018, increasing the monthly rent to \$463.65.

The law student representing the tenant requested the following in the hearing:

- 1) An order for the landlord and landlord's agents to discontinue interfering with the tenant's right to use and enjoy her green space.
- 2) An order allowing the tenant exclusive use of the green space surrounding her manufactured park home, which the law student stated was implied as part of the tenancy agreement.
- 3) An order for the landlord to provide the tenant with documentation, which shows the tenant's green space as hers for exclusive use as part of this tenancy.

The law student made the following submissions. She stated that the landlord has violated several sections of the *Manufactured Home Park Tenancy Regulation and Act*, specifically sections 12 of the Regulation that pertains to the tenant's right to having set boundaries that she may use, and her right to quiet enjoyment.

The law student stated that the tenant has been subjected to continued harassment from the landlord, which as interfered with the tenant's ability to enjoy her green space. The law student stated that the tenant has had exclusive use of this green space for over five and half years, and she has taken care of this space. She stated that an incident had taken place on October 19, 2016 where the owner had placed stakes and drew lines, as well as placed a note on the tenant's door, prohibiting her from using this green space. The law student states that the boundaries are not defined on the tenancy agreement, and the tenant is entitled to exclusive use of this green space as she always had during this tenancy on an implied basis.

The owner of the property testified in this hearing that the property lines were explained to the tenant when she first moved in. The landlord admits to marking lines on the property, which he states was in response to the previous decisions made by Arbitrators

following two hearings in 2016. These hearings pertained to 1 Month Notices issued by the landlord to end the tenancy for cause. In both decisions, the Arbitrator had cancelled the 1 Month Notices, and the tenancy continued in accordance with the *Act* and tenancy agreement. No formal orders were made other than for a recommendation that both parties to communicate in writing, and for the Tenant to refrain from making obscene gestures or outbursts which may be seen or heard from the common areas towards the Landlord.

The landlord responded in the hearing that the tenant continues to make false accusations, and was the harassing party. The landlord testified that they were unable to maintain the property due to the tenant's intimidation tactics. The landlord called two witnesses in the hearing, one who had witnessed the landlord being sprayed with a water hose in July of 2017.

Analysis

Section 12 of the Manufactured Home Park Regulation speaks to the tenancy agreement, and what must be included:

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.

I find it was undisputed by the landlord that the tenant has never been formally provided with the boundaries of the manufactured home site as required in section 12(1) of the Manufactured Home Park Regulation as stated above. On this basis I am making an order that the landlord comply with section 12(1)(b) of the Regulation as stated above, and provide the tenant with an updated tenancy agreement that complies with the Regulation. This should be done as soon as practicable, and in a timely and reasonable manner.

While the tenant requested a specific order designating the green space as hers for exclusive use, I find that the tenant has not provided sufficient evidence to demonstrate that this green space falls within the designated boundaries that is the tenant's for exclusive use. On this basis, I dismiss the tenant's application for orders which designate the green space as the tenant's for exclusive use.

The tenant testified in the hearing that the landlord had violated her right to quiet enjoyment under section 22 of the *Act*.

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.

The tenant did not request any remedies other than the orders requested that allow the tenant exclusive use of the green space. As stated above, I find the tenant failed to provide sufficient evidence that the green space is hers for exclusive use. As there seems to ongoing conflict between both parties, I remind both parties of their obligation to comply with the *Act*, Regulation, and tenancy agreement.

I find that the tenant's application has some merit, and accordingly I allow the tenant to recover half of the filing fee for this application.

Conclusion

I order that the landlord comply with section 12(1)(b) of the Manufactured Home Park Regulation, and provide the tenant with an updated tenancy agreement that complies with the Regulation, specifically that the tenancy agreement contains "the boundaries of the manufactured home site measured from a fixed point of reference". This should be done as soon as practicable, and in a timely and reasonable manner.

I allow the tenant to implement a monetary award of \$50.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$50.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I remind both parties that they are bound by their obligations under the *Act*, Regulation, and tenancy agreement as long as this tenancy is in place.

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 8, 2018

Residential Tenancy Branch