



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUMMERLAND BEACH RV & CAMP
GROUND and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, OL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on January 16, 2019, wherein the Landlord sought an Order that the Tenant remove a wooden structure/shed on her manufactured home park site as well as recovery of the filing fee.

Only the Landlord's manager, R.D., called into the hearing. She gave affirmed testimony and was provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:24 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that R.D. and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. R.D. testified that she served the Tenant with the Notice of Hearing and the Application on January 17, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where

the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

I therefore find the Tenant was duly served as of January 22, 2019 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's 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.

Issues to be Decided

1. Should the Tenant be ordered to remove the wooden shed on her manufactured home site?
2. Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Landlord's representative, R.D., testified that the Tenant rents a manufactured home pad from the Landlord upon which sits her recreational vehicle. The Tenant occupies the recreational vehicle as her primary residence and it is therefore used for residential, rather than recreational purposes. The Tenant pays monthly rent. The Tenant also pays her own hydro, although cable is provided by the Landlord. R.D. confirmed there are no restrictions on visiting hours and the parties agreed that the *Manufactured Home Park Tenancy Act* would apply to the tenancy.

R.D. stated that each resident of the park is provided a copy of the "Park Regulations" when they move into the park. A copy of the Park Regulations was provided in evidence for my consideration and which specifically prohibit the building of a shed, or any other structure which in turn prohibits the removal of the RV. The evidence indicates a copy of the Regulations was provided to the Tenant again in December of 2018.

R.D. submitted that the Tenant has built such a shed, contrary to the Regulations. R.D. further testified that the Tenant's shed is also located over her propane tanks which does not allow for appropriate venting and creates a safety hazard. R.D. testified that she has attempted to discuss this issue with the Tenant yet the Tenant refuses to talk to her about it.

On December 12, 2018 R.D. wrote a letter to the Tenant regarding her shed. In this letter the Landlord writes:

Although you have been told that there are no wooden structures allowed in the park, you have taken it upon yourself to build a shed. Enclosed is a copy of the regulations for your convenience. Ownership has told us that your shed must be removed within 10 days, or we will remove it at your expense.

R.D. further testified that after they provided the Tenant with the above letter, the Tenant stated that she would “sue the Landlord” if they attempted to remove the shed.

Analysis

After consideration of the Landlord’s undisputed testimony and evidence and on a balance of probabilities I find as follows.

Although jurisdiction was not at issue in this proceeding, I find that this tenancy falls under the *Manufactured Home Park Tenancy Act*. Although the manufactured home is a recreational vehicle, I am persuaded that this is a tenancy as opposed to a license to occupy. Guidance can be found in the *Residential Tenancy Branch Policy Guidelines* and in particular *Policy Guideline 9—Tenancy Agreements and License to Occupy*. Applying this *Guideline* to the facts before me I find that the recreational vehicle is the Tenant’s primary and permanent residence and is intended for residential rather than recreational use. Further, I find that the Tenant pays monthly rent rather than daily rent. I also accept the Landlord’s representatives testimony that the park does not impose visiting hours and the parties expressly agreed the *Manufactured Home Park Tenancy Act* would apply to the tenancy.

I find that the Tenant has built a shed on her manufactured home site contrary to the Park Regulations. I further find that the Tenant has been asked, both verbally and in writing to remove the shed.

Section 55(3) of the *Manufactured Home Park Tenancy Act* provides as follows:

Director's authority respecting dispute resolution proceedings

55 (1) The director has authority to determine

(a) disputes in relation to which the director has accepted an application for dispute resolution, and

(b) any matters related to that dispute that arise under this Act or a tenancy agreement.

(2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

(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.

(4) The director may dismiss all or part of an application for dispute resolution if

(a) there are no reasonable grounds for the application or part,

(b) the application or part does not disclose a dispute that may be determined under this Part, or

(c) the application or part is frivolous or an abuse of the dispute resolution process.

(5) [Repealed 2006-35-26.]

Pursuant to section 55(3) I hereby Order as follows:

1. By no later than March 12, 2019 the Tenant shall remove the shed from the manufactured home site.
2. Should the Tenant not remove the shed from the manufactured home site by March 12, 2019, the Landlord is authorized to enter the site on March 13, 2019 and remove the shed, such costs to be recoverable from the Tenant.

The Tenant is reminded that failure to comply with the Regulations may result in the Landlord issuing a 1 Month Notice to End Tenancy for Cause pursuant to section 40 of the *Manufactured Home Park Tenancy Act*.

As the Landlord has been successful in their application I grant their request for recovery of the filing fee. The Landlord is granted a Monetary Order in the amount of **\$100.00**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Landlord's application for an Order that the Tenant remove the shed from the manufactured home park site is granted.

The Landlord's application for recovery of the filing fee is granted.

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: February 26, 2019

Residential Tenancy Branch