Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PORT 4 HOMES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

This hearing dealt with the tenant's/estate's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- a monetary order for compensation for losses, damages or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 60;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 55; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As Landlord MM (the landlord) confirmed that they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on March 6, 2019, I find that the landlord was duly served with this package in accordance with section 82 of the *Act.* Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 81 of the *Act*.

Preliminary Issues

Near the commencement of the hearing, the tenant's advocate (the advocate) testified that the situation involving this tenancy had changed. The parties confirmed that a new tenancy agreement had been entered into between the landlord and an individual who had purchased the manufactured home from the estate that those appearing on behalf

of the tenant represented. This new tenancy agreement for this manufactured home park site within the landlord's manufactured home park (the Park) was to take effect on May 1, 2019, by which time the sale of the manufactured home in question from the estate of the tenant to the purchaser was also to have been finalized.

Early in the hearing, the advocate said that the tenant wished to have the tenant's application for a monetary award of $2,040.02 severed from the remainder of the tenant's application. The advocate testified that the tenant still wished to proceed with the remainder of the application to obtain a ruling regarding the legality of the landlord's Park Rules. The advocate maintained that the Park Rules had the effect of lowering the value of the manufactured home of the estate of the tenant, and other tenants in the Park.

I alerted the parties that it might be very difficult to consider the tenant's application relating to the Park Rules separately from any claim the tenant may have with respect to the monetary award for losses arising out of the landlord's imposition of and subsequent enforcement of the Park Rules. I asked the parties to present their positions with respect to the extent to which the advocate's request for a determination regarding the Park Rules could be considered separately from the tenant's application for a monetary award for losses.

Although the tenant's representatives at this hearing were definitely interested in proceeding with a separate determination regarding the Park Rules, the landlord's representatives were less clear as to whether they thought the hearing could proceed with the application severed from the application for a monetary award. The landlord did say that they had no real objection to proceeding with a consideration of the Park Rules as they believed that the Park Rules were in accordance with the relevant legislation. Landlord representative JW recognized that problems could arise if the two parts of the tenant's application were separate from one another; however, the landlord's representatives stated that they were hoping to establish closure on this matter, as the tenant had submitted three applications prior to this one in the months immediately preceding this hearing (See references above).

During the course of the hearing, the advocate and the tenant's other representatives confirmed that they were withdrawing their application for a monetary award. They said that if the sale of the manufactured home proceeds as planned and if the landlord does not take any action to delay or prevent this sale from happening, then they were unlikely to submit any application to seek a monetary award from the landlord.

Under these circumstances, the tenant's application for a monetary award for losses, damages or other money owed as a result of this tenancy is withdrawn. The tenant is at liberty to apply for a monetary award in the event that the sale of their manufactured home does not proceed as planned and they remain as owners of this manufactured home in the landlord's manufactured home park.

The advocate also read into the record of this hearing a reference to an anonymized decision of another arbitrator appointed pursuant to the *Act* from 2014, in which the advocate maintained the arbitrator had found that changes to Park Rules similar to those initiated by the current landlord were done without legal authority. Without any proper reference whereby I could consider that sworn testimony and without the advocate having entered a copy of this decision into written evidence for consideration by the landlord, I advised the parties that I would be giving very little weight to this oral testimony. I also noted that each situation is different and that the *Act* does not in any way bind an arbitrator to rely on precedent established in other hearings in other manufactured home parks with different Park Rules and different circumstances.

Issues(s) to be Decided

Should any orders be issued against the landlord with respect to this application? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This application was filed by the estate of the tenant who passed away on February 4, 2018. The parties agreed that the deceased tenant first entered into a manufactured home park site rental for a pad for their 1977 manufactured home in 1987. The landlord entered into written evidence a copy of a January 1, 2014 tenancy agreement, which the landlord testified was similar to new tenancy agreements the owners of the Park provided to all tenants of the Park at that time. The advocate for the estate of the tenant noted that the copy of the tenancy agreement entered into written evidence was not signed by the tenant.

The parties agreed that the current monthly rent for this pad site is $547.00, payable in advance by the first of each month. The parties agreed that monthly rent for April 2019 and all months prior to that have been paid for this pad site.

In their written evidence and in sworn testimony by the representatives of the estate and their advocate, the Applicant maintained that the estate has lost two purchasers of the manufactured home due to the stipulations that the landlord attached to their agreement to allow the prospective purchasers to keep the manufactured home in the Park following the sale of the manufactured home.

The first of these conditional sales occurred in October 2018. The tenant maintained that the original offer of $100,000.00 was reduced to a final offer of $80.000.00 after the realtor for the prospective purchaser obtained a list of items that the landlord required to be upgraded in order to allow the prospective purchaser to enter into a tenancy agreement with the Park. The landlord noted that the realtor apparently revised the offer as part of their own inspection of the condition of the manufactured home and without any involvement of the landlord.

The second of these conditional sales was signed on February 23, 2019. This prospective purchaser withdrew the offer to purchase the manufactured home for $85,000.00 after having received the list of upgrades from the landlord to enable the purchaser to enter into a tenancy agreement with the Park.

The tenant supplied written evidence that the landlord established a new set of Park Rules in 2018, requiring anyone selling a manufactured home in the park, to submit to a condition inspection and undertake upgrades if the prospective purchaser wished to keep the manufactured home in the Park and enter into a tenancy agreement with the landlord. The tenant maintained in their written evidence that this had the effect of forcing existing manufactured home owners in this large Park to accept reduced offers for the purchase of their homes because prospective purchasers would have to commit to undertaking significant repairs to bring the homes up to the standards expected by the landlord. The tenant asserted that these standards established by the landlord were arbitrary, did not include input by a park committee, which is not in place at this manufactured home park, and went far beyond what were the requirements for the maintenance of manufactured homes under the *Act* or the *Manufactured Home Park Regulation*.

The landlord entered into written evidence a copy of revisions to the Park Rules established in February or March 2018. With respect to the Sale of Homes, the Park Rules questioned by the tenant in this application are as follows:

...You are free to sell your home to anyone at anytime. If the home will be remaining in the community then the sale is subject to the following:
a. Any person wishing to purchase the home and remain in the community must be approved for tenancy by management.
b. Any home wishing to remain in the community is subject to a Unit Condition Inspection (UCI).
c. Any upgrades or repairs identified in the UCI as required, are the responsibility of the seller to be completed before sale, or alternatively will be a condition of tenancy passed on to the buyer...

The landlord entered into written evidence a copy of the report of the condition inspection of this manufactured home that was dated April 16, 2018. In that report, the landlord required the following work be done within four months of any new purchaser entering into a tenancy agreement with the landlord for this manufactured home. The report stated that "the unit/site does not meet park standard and requires the following upgrades"... These upgrades included a requirement that the new purchasers replace metal siding with vinyl siding to match the existing porch, replace all of the aluminum windows but for the picture window, as well as remove moss from the roof and wash the outside eavestrough. The tenant did not disagree with the request that moss on the top of this manufactured home needed to be removed, nor was any mention made of the request to clean the eavestrough. I also note from the landlord's inspection "form" that although the landlord was not insisting on the tenant's completion of work on the roofline or shingles, that the landlord considered it within their purview to require manufactured homes to have the "roof redone with peaked style and laminate shingles."

The landlord provided written evidence, which included copies of the provisions of the *Manufactured Home Park Tenancy Regulation* (the *Regulation*). The landlord confirmed that they were relying on section 30 of the *Regulation,* a copy of which they entered into written evidence for their determinations regarding the Park Rules:

Making rules

> ***30*** *(1) The park committee or, if there is no park committee, the landlord, may establish, change or repeal a rule if it is reasonable in the circumstances and if the rule has one of the following effects:*
>
> *(a) it promotes the convenience or safety of the tenants;*
>
> *(b) it protects and preserves the condition of the manufactured home park or the landlord's property;*

(c) it regulates access to or fairly distributes a service or facility;
(d) it regulates pets in common areas...

The tenant provided sworn testimony and written evidence that the upgrades required by the landlord in order for the landlord to enter into a tenancy agreement with prospective purchasers of their manufactured home totalled $18,256.00. The landlord testified that these upgrades could likely have been accomplished for much less than this quoted amount. The advocate testified that the landlord had not entered any written evidence to dispute the accuracy of the estimated cost of the requested upgrades.

The tenant applied for a monetary award of $2,040.02, plus the recovery of the filing fee for this application. At the hearing, the tenant's representatives testified that there was now an additional offer to purchase the manufactured home that had been accepted by the estate and which had also received the written approval of the landlord to establish a tenancy on this site for the manufactured home. The tenant's representative said that as a result of this accepted offer there may no longer be any monetary loss that the tenant will be seeking from the landlord, although they reserve the right to initiate a future claim, if one becomes necessary. The landlord confirmed that the new tenancy agreement with the new tenant had been signed and was effective May 1, 2019. As of that date, ownership of the manufactured home is to transfer to the purchasers of that home and the purchasers will become responsible for monthly pad rental payments to the landlord for this manufactured home site.

Under these circumstances, at the hearing I asked the tenant's representatives to explain how a determination as to the legality of the Park Rules affected this estate, which is scheduled to close the sale of the manufactured home to the purchaser of that home by May 1, 2019.

At the hearing, Tenant Representative AG expressed concern that the landlord might still find some way to reverse the decision to allow the purchaser of the manufactured home to enter into a tenancy agreement with the landlord and, in this way, stop the sale of the manufactured home from being finalized. The landlord gave sworn testimony that this would no longer be possible as the landlord has signed a tenancy agreement with the purchaser of the manufactured home, and no further approvals were needed in order to ensure that the tenancy with the estate ends by May 1, 2019, and the new owner of that home takes possession that day.

Despite the tenant's withdrawal of the monetary portion of the claim, the advocate testified that there was a clear need to make a determination regarding whether, at law, the landlord was "eligible to make Park Rules." The advocate also requested an order setting aside the Park Rules, which the advocate maintained were not properly in effect for this manufactured home park. The advocate maintained that a determination by an arbitrator appointed pursuant to the *Act* was necessary to clarify whether the landlord could institute Park Rules that would affect the value of the manufactured homes of those living in this Park. The advocate asserted that there was a significant public policy benefit to be derived from making a finding with respect to the tenant's claim that the Park Rules established by the landlord were not authorized by the legislation and had the effect of forcing manufactured home owners of limited means to accept a reduced price for their manufactured homes. Even though a ruling on the legality of the landlord's Park Rules may have little impact on the estate, poised as it is to close the sale of the manufactured home to the purchaser, the advocate sought a ruling which would be of assistance to other tenants in this Park and other tenants in manufactured home parks across the province who may be affected by similar attempts to impose conditions that the advocate considered unfair by way of Park Rules.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters, documents, legislation, and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant’s claim and my findings are set out below.

I should first note that the request for a determination by an arbitrator appointed pursuant to the *Act* will not have the far-reaching effect that the advocate was seeking in obtaining such a ruling. As was noted above, the *Act* requires that each decision be reached on its own after considering the merits of each case and the relevant policy and legislation, and in the context of the current application, how the Park Rules affect each individual application. In requesting this determination, the advocate and the tenants seem to have been hopeful that some type of binding ruling could be applied against the landlord that would prevent the landlord, and perhaps even other landlords in other manufactured home parks, from employing Park Rules to affect the rights of manufactured homeowners. Such determinations would need to be made by properly delegated arbitrators acting on the basis of applications from affected manufactured home owners who provide their owners of manufactured home parks with a proper opportunity to address their assertions as they relate to their individual situations and Park Rules. Unlike in a Court of Law, legal precedent is of little use in applying the

legislation to the facts presented in each matter that leads to a dispute resolution hearing under the *Act*.

By way of background, some manufactured home parks have Park Committees established pursuant to section 31 of the *Act,* and some of these Committees provide residents in the Park with opportunities to establish Park Rules pursuant to section 32 of the *Act*. In other parks, such as this one, landlords have established their own Park Rules in the absence of a Park Committee. Section 32 of the *Act* reads in part as follows*:*

Park rules

> ***32*** *(1) In accordance with the regulations, a park committee, or, if there is no park committee, the landlord may establish, change or repeal rules for governing the operation of the manufactured home park.*
> *(2) Rules referred to in subsection (1) must not be inconsistent with this Act or the regulations or any other enactment that applies to a manufactured home park.*
> *(3) Rules established in accordance with this section apply in the manufactured home park of the park committee or landlord, as applicable.*
> *(4) If a park rule established under this section is inconsistent or conflicts with a term in a tenancy agreement that was entered into before the rule was established, the park rule prevails to the extent of the inconsistency or conflict...*

Section 47 of the *Act* establishes the process whereby a landlord can be asked for consent to sublet a manufactured home site to another tenant. Section 48 of the *Act* outlines the grounds whereby a landlord can withhold consent to a request for a sublet of a manufactured home site. Of some relevance to this application is the following requirement of section 48(i) of the *Act*:

> ***48*** *For the purposes of section 28 (2) of the Act [landlord's consent], the landlord of the park may withhold consent to assign or sublet only for one or more of the following reasons:...*
>
> > *(i) the manufactured home does not comply with housing, health and safety standards required by law...*

Somewhat similar wording is used with respect to the obligations to repair and maintain a manufactured home park and site outlined as follows in section 26 of the *Act*:

> ***26*** *(1) A landlord must*
>
> *(a) provide and maintain the manufactured home park in a reasonable state of repair, and*
>
> *(b) comply with housing, health and safety standards required by law.*
>
> *(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the manufactured home site and in common areas.*
>
> *(3) A tenant must repair damage to the manufactured home site or common areas that is caused by the actions or neglect of the tenant or a person permitted in the manufactured home park by the tenant.*
>
> *(4) A tenant is not required to make repairs for reasonable wear and tear.*
>
> *(5) A landlord is not required to maintain or repair improvements made to a manufactured home site by a tenant occupying the site, or the assignee of the tenant, unless the obligation to do so is a term of their tenancy agreement....*

At the hearing, the advocate noted that the landlord had not pursued any action relevant to this application against the tenant requiring the tenant to undertake repairs required because of problems with the health, cleanliness and sanitary standards on the site or in common areas or to repair damage caused to the site.

Section 29 of the *Regulation* provides the following description of the process whereby the Park Rules would need to be provided to a person entering into a tenancy agreement:

> ***29*** *(1) Prior to a person's entering into a tenancy agreement with a landlord, the landlord must disclose in writing to that person all rules in effect at the time of his or her entering into the tenancy agreement.*
>
> *(2) Subsequent to a tenant's entering into a tenancy agreement with a landlord, the landlord must give notice in writing to that tenant of any rule at least two weeks before the rule becomes effective...*

In this case, the Park Rules that the tenant objects to were established in February or March 2018, many years after this tenancy began. There appears to be no issue that

the Park Rules containing the change which the tenant finds objectionable were provided to the tenant and others in the park after they were established.

Since there is no park committee in place, section 30 of the *Regulation* allowed the landlord to establish Park Rules. As the landlord has submitted, there is no requirement that a prospective purchaser keep the manufactured home in the Park once it is purchased. For that matter, the tenant could also remove the manufactured home to another location and sell the home from that location without any provisions in place requiring an upgrade that neither the vendor nor the purchaser were willing to undertake. However, as the tenant has noted, most manufactured homes do not get moved and, as was the situation with this home, were placed on the market for sale with a view to leaving the 1977 manufactured home in the existing manufactured home park.

While I find that the landlord clearly has the legal authority to establish Park Rules, that authority is limited to the reasonableness of the rule in the circumstances, as well as by the provision in paragraph 30(1)(c) of the *Regulation* that "it protects and preserves the condition of the manufactured home park, or the landlord's property." A further limitation on the landlord's ability to make rules is provided in paragraph 30(3) of the *Regulation* in that "a rule established, pursuant to subsection (1) is enforceable against a tenant only if...(d) the rule does not change a material term of the tenancy agreement."

Given this wording and the current set of Park Rules, it strikes me that each individual would be in a different situation that would require individualized consideration of the circumstances surrounding the tenancy and the landlord's actions to enforce the Park Rules. For example, each tenancy within the park no doubt started on a different date. Some manufactured homes, like this one built in 1977, are very old, while others may be much newer. Despite their age, some manufactured homes may be in such poor condition that they could not possibly be moved, while others even older may have been well maintained and could be moved to another manufactured home park with less stringent requirements or could be relocated to a different type of property where they may used for residential or non-residential purposes. At the hearing, the landlord gave undisputed sworn testimony that there was a very recent example of a very old manufactured home that was successfully moved to another location, thus confirming the portability of even old manufactured homes. Some tenancies may have been subject to repeated repair requests by the landlord pursuant to the provisions of section 26 of the *Act*, while others may have had no such maintenance history. Depending on when tenancies were established, manufactured homeowners may have received a

very different understanding as to their prospects of resale without undertaking or requiring major upgrades.

The types of upgrades required by the landlord before approval of a sale may also lead to very different outcomes should a tenant apply for dispute resolution. For example, it is quite possible that the landlord's Park Rule requiring that a "peaked roofline" be installed or that "laminate shingles" be installed could lead to a very different decision with respect to how that provision "protects and preserves the condition of the manufactured home park or the landlord's property" (the wording used in paragraph 30(1)(c) of the *Regulation*) as opposed to a requirement that broken windows be repaired with modern equivalents. It is also possible, as would seem to be the case in this instance, that the Park Rule could have the effect of requiring the tenant to incur a loss in value of the manufactured home for repairs that section 26(4) of the *Act* would otherwise prevent the landlord from requiring for reasonable wear and tear. , a

Another complicating factor preventing the issuance of any blanket decision covering the Park Rules is that there may also be different interpretations given to what is required to "protect and preserve" the condition of the manufactured home park or the landlord's property" depending on whether the majority of manufactured home owners in the park have homes with modern vinyl siding or vinyl windows. Purchasers of existing homes who have agreed to undertake the upgrades required by the landlord in order to obtain a tenancy agreement may very well have done so under the understanding that over time all manufactured homes in the park will either be new or will have been required to upgrade when they changed ownership. Thus, some manufactured homeowners in the park may be very much in favour of the gradual upgrading of the housing stock within the park that appears to be the objective of the landlord, and in this way may view the Park Rules as "protecting and preserving" their investment in housing in this park. In fact, these tenants in the Park may have only agreed to undertake such repairs with a view to increasing the value of their manufactured home once most others in the park comply with these Park Rules when resales occur.

Others, like the tenant in this case, may view the landlord's Park Rules as a provision that has led to a drop in the value of their manufactured home imposed by the landlord and in a way that extends far beyond the goal of the "protection and preservation" of the landlord's property. The landlord testified that their family purchased this manufactured home park about twenty years ago and have been continuing to invest in the park on an ongoing basis to retain its position as the highest quality park of its type in this

community. While such motivations are commendable, the Park purchased as it was twenty years ago contained an existing stock of manufactured homes. At that time, the landlord would have understood by the nature of this type of real estate that most manufactured homes remain in parks and are not moved. Thus, to an extent the landlord understood at the time that they had purchased a property that contained many depreciating assets that would be difficult to remove over time. This would be partially offset through the potential to create new lots and through the natural process of attrition whereby existing tenants decide to purchase new manufactured homes , both potentially leading to the modernization of the housing stock over time. The effect of this aspect of the Park Rules if fully instituted over time may very well exceed the requirement established in paragraph 30(1)(c) of the *Regulation* to "protect and preserve the landlord's property" to the point where it would actually increase the overall value of the manufactured home park and, the landlord's property.

As was noted above, there may be many tenants in the park who would be in favour of the increase in the value of their own manufactured homes as a result of these 2018 changes to the Park Rules. However, others might not be so positioned as to view these Park Rules as to their advantage, and might even consider these changes to be changes to the material terms of their tenancy, given that their manufactured homes may meet acceptable provincial standards, just not those established by the landlord for this Park.

Based on the above-noted considerations, I find that although the Park Rules were legally brought into effect; their application to individual tenancies within this Park would need to be reviewed on a case by case and individual basis. As the details of these tenancies are not before me nor is any application from any of these other tenants properly before me, I can only consider the current application from the tenant.

The tenant has withdrawn their application for a monetary award. Their manufactured home is scheduled to be sold with the purchaser having already signed a tenancy agreement for this pad site with the landlord. There is no record of maintenance issues beyond reasonable wear and tear to be expected with a manufactured home built in 1977 with respect to the siding or the windows of the manufactured home. Under these circumstances, it is possible that the Park Rules established by the landlord with respect to the replacement of windows and siding for this tenancy extended beyond the purpose of the preservation and protection of the manufactured home park and the landlords' property; however, there is no need for me to make any finding with respect to whether the Park Rules in this case impacted the tenant's rights or interests, as they have

advised that they have not suffered a monetary loss as long as the existing sale continues as planned.

While I realize that this was not the outcome that either party was seeking in this matter, I can assure them that I have carefully considered their submissions, representations and requests, and have attempted to explain the reasons why I am unable to make a determination that would be binding on others residing in this Park, who were not parties to the tenant's application.

Under the circumstances, I dismiss the tenant's application to recover their filing fee from the landlord.

Conclusion

The tenant's application for a monetary award is withdrawn.

I find that the landlord had the legal authority to establish the Park Rules.

As this tenancy is ending shortly, and I cannot make the type of general finding with respect to the Park Rules that the tenant is seeking, I make no order setting aside the Park Rules. In this regard, the extent to which the Park Rules apply to the tenants in this park relies on the circumstances of each tenancy, which are not properly before me.

I dismiss the tenant's application for the recovery of their filing fee without leave to reapply.

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: April 17, 2019

Residential Tenancy Branch