Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: DRI LRE OLC OT PSF

Introduction:

Both parties attended the hearing and gave sworn testimony. The tenant stated she served that the Application for Dispute Resolution hearing package by registered mail and the landlord agreed he received it. I find the documents were legally served pursuant to section 81 and 82 of the t *Manufactured Home Park Tenancy Act* (the Act). The tenant applies under the Act for orders as follows:

(a) To dispute a rent increase which was not made in accordance with sections 34, 35 and 36 of the Act;

(b) To restrict or set conditions on the landlord's entry into the unit or site pursuant to section 23;

(c) To have the landlord comply with the Act and protect her quiet enjoyment pursuant to section 22; and

d) To order the landlord to provide services required by the tenancy agreement or law pursuant to section 21 and to compensate her for services withdrawn.

Issues to be Decided:

Has the tenant proved on the balance of probabilities that she is entitled to orders as requested?

Background and Evidence:

Both parties attended. This was the fourth hearing between these parties in the last few months and the tenant said she planned to bring more applications against the landlord. She said she did not get the landlord's evidence in time. The evidence is that a postal service notice was left on her door on April 30, 2019 that the evidence was available for pickup. She said she did not pick it up until May 2, 2019. According to Rule 3.15 of the Rules of Procedure, the respondent's evidence must be received by the applicant not less than 7 days before the hearing. It states:

Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. See also Rules 3.7 and 3.10.3.16

Consideration of new and relevant evidence: …The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

I find the tenant was advised the evidence was available for pickup on April 30 which is 9 days prior to the hearing today. Even if she chose not to pick it up until May 2, 2019, I find she received it 7 days prior to the hearing and should have had ample time to prepare. In any case, this is the fourth hearing between these parties and much of the evidence is repeated. The previous arbitrator chose to separate the tenant's claims from her application to cancel the Notice to End Tenancy for cause so they were not heard until today. For these reasons, I find the acceptance of the landlord's evidence does not unreasonably prejudice the tenant or result in a breach of the principles of natural justice.

The hearing was very contentious with much documentary evidence provided. I extended the hearing time from 60 minutes to 76 minutes to permit the parties to discuss their many issues. I have considered all the evidence but only that relevant to my decision is noted.

There is no written tenancy agreement but the parties agree the tenancy commenced on October 1, 2017 and rent was $500 payable on the first of the month. The landlord said the rent included a $100 allowance for hydro and the tenant was advised if the usage of hydro was over $100 a month per tenant, the rent would be adjusted accordingly the next year. The tenant said she used less than $100 a month and should be entitled to a refund. The tenant's rent was increased by Notice dated October 30, 2018 by $20 to $520 commencing February 1, 2019 (the landlord mistakenly put 2018) and she questions if the increase is legal.

The tenant said the rent included cable and internet from October 2017 but the landlord changed the password near the end of January 2019 and would not supply her with the new password. The landlord said in 2017, there was Wi-Fi internet near his home and the restaurant with a commercial password and this service is still available to the tenant but he changed his personal password. He shared this new password with many

tenants as a gesture of good will. However, this tenant had destroyed good will in the park through her actions so he did not share the password with her. The landlord also agrees he cut the cable to her unit in January for she had not paid her rent. The tenant said it cost her nothing to have the cable re-connected but it cost her $62 a month ($55 plus tax) for the first 3 months (Jan-March) and $125 + tax now to the end of May. She said she has disabilities and the internet is necessary for her safety. She suffered about 2 weeks without service. The landlord contended the business internet was always available to her as at the start of her tenancy but he did not give her the password to access his personal internet service. The tenant said her password did not work since the beginning of January 2019 and she had had internet access since the beginning of her tenancy. The tenant requests that internet access be restored to her and she be compensated for the expenses she has incurred due to the landlord cutting it off.

The tenant requests the landlord to comply with the Act and only enter her site in compliance with section 23 of the Act and protect her quiet enjoyment pursuant to section 22 of the Act. The landlord said he has no wish to enter her site unless required by circumstances such as building a fence along the property line; in the past, any entry was to return the tenant's property which was left on other areas of the property. Currently she has a shed encroaching on the neighbour's property according to the survey in evidence and a motor home which the landlord said was only supposed to be there until she transferred her belongings into her new home and is still there to date. The tenant said she expected the landlord to move her encroaching shed for her since he had placed it there for her at the beginning.

In respect to peaceful enjoyment, the landlord asserts that it is the tenant who is disturbing the landlords' and other tenants' peaceful enjoyment. In letters provided in evidence, several neighbours recount the tenant's abusive language and aggressive behaviour, like "getting in one's face" and recording conversations and taking pictures with her phone. The landlord requests that the tenant be restrained to her own site and entrance to it through the park and that she not have contact with his wife at any time in order to maintain peace and decrease tensions in the park. One letter from a neighbour describes how the landlord's wife has feared for her safety and left home for periods of time because of actions of this tenant. The landlord submits he complies with the Act and addresses any noise complaints that are in violation of the regulation.

Although the landlord wants the tenant to get rid of her excess belongings which overflow the boundary of her site, he states that garage sales at individual sites are a problem due to access and traffic. He suggests the tenant negotiate a suitable time to have her garage sale in the restaurant parking lot at the front of the property. There

was considerable acrimonious discussion about the excess tenant's belongings. The landlord denies her request to have a lean-to attached to her shed which is already partly on neighbouring property. Her RV is also parked outside her site. Two Notices to End Tenancy for cause were served on the tenant, mainly based on the problems caused by her excess belongings extending into other sites and areas. When I pointed out that she has been a tenant since October 2017, the tenant said the weather had been bad, she had a bad back and other disabilities and there was a lack of storage room. She agreed it would be reasonable to give her until August 31, 2019 to remove her excess belongings or manage to store them within the boundaries of her home site.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

I find the allowable increase in rent for manufactured park home sites was 4% for any Notice of Rent Increase given in 2018. I find the landlord's Notice of Rent Increase served in October 2018 which increased the rent from $500 to $520 a month is legal (4%) and served in accordance with the Act. I find the landlord's evidence credible and I prefer it regarding the rent being $500 with an inclusive allowance of $100 for hydro. I find this allowance is calculated to cover the hydro in the whole park and not just individual hydro meters. I find the information the landlord gave the tenant about possible increases in rent due to possible increases in hydro is in accordance with the Regulations as follows:

Proportional Amount Rent Increase

Manufactured home park landlords can increase the rent by the annual allowable amount plus an additional amount to cover local government levies and regulated utility fees.

The "proportional amount" (also known as an enhanced rent increase) is the change in local government levies plus the change in regulated utility fees, divided by the number of manufactured home sites in park. This means that each tenant of the park pays for a part of the year's increase in taxes and fees…

Expenses Included

Only the cost of government levies and regulated utility fees for the common property of the park can be included in the rent increase calculation:

Government levies: Items that are listed on a local government tax notice such as school taxes, hospital levies or garbage collection fees

Utility fees: Charges for public utilities such as electricity, natural gas, water, telephone and cable.

Regarding the tenant's claim for damages, I find section 7 of the Act states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I dismiss the tenant's application to find her rent should be $400 a month and if her personal hydro use is metered at less than $100 a month, the extra should be refunded to her.

In respect to the tenant's submissions on internet and cable, I find the landlord agrees he cut the cable to her unit in January for she had not paid her rent. The tenant said it cost her nothing to have the cable re-connected but it cost her $62 a month ($55 plus tax) for the first 3 months (Jan-March) and $125 + tax now to the end of May. She said she has disabilities and the internet is necessary for her safety. I find section 21 of the Act provides:

Terminating or restricting services or facilities

21 (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the manufactured home site as a site for a manufactured home, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I find the weight of the evidence is that the landlord terminated the tenant's service of Wi-Fi and internet by not providing her with the new password. Although he agreed he changed the password and tried to justify not providing it to the tenant because of a lack of goodwill on her part, I find he acted in violation of section 21 of the Act and is liable for the costs incurred by the tenant due to his actions. I prefer the tenant's evidence that she had Wi-Fi internet service included until January 2019. I do not find it credible that the commercial service was the same and still available to her as in 2017. I find as fact that she lost the service she had due to the landlord's change of password and refusal to give it to her. I find the tenant entitled to recover 3 months cost of Wi-Fi internet at $62 a month and 2 months at $125 (+tax).a month. Tax appears to be 12% so this would make the increased rate $140 a month. This would reimburse the tenant until May 31, 2018 for the withdrawal of the internet service. I hereby order the landlord to provide the tenant with the new password so her access to Wi-Fi internet is resumed. Should the landlord not provide her with access, I find the tenant may deduct $140 from her rent until he does provide the new, correct password.

Regarding the landlord's entry into the tenant's site, I find section 23 of the Act applies:

23 A landlord must not enter a manufactured home site that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord has an order of the director authorizing the entry;

(d) the tenant has abandoned the site;

(e) an emergency exists and the entry is necessary to protect life or property;

(f) the entry is for the purpose of collecting rent or giving or serving a document that under this Act must be given or served.

The landlord is advised to follow these provisions and give 24 hour written notice of entry unless one of the noted exceptions applies. I find the landlord said he only went onto the property to return the tenant's property or to build a border fence. I find these are not exceptions to the 24 hour notice period unless the tenant consents.

Section 22 of the Act provides for the protection of the tenant's quiet enjoyment. The tenant claims her peaceful enjoyment has not been protected.

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:

- *reasonable privacy;*
- *freedom from unreasonable disturbance;*
- *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];*
- *use of common areas for reasonable and lawful purposes, free from significant interference.*

I find insufficient evidence to support the tenant's allegation that the landlord or other tenants are unreasonably interfering with her quiet enjoyment. I find the letters in evidence written by others in the park note that the tenant is instigating much of the disturbance in the park. I dismiss this portion of her claim. I note the landlord states the tenant still has use of the laundry and I encourage her to follow the rules and note her usage as required.

Section 1 of the Act defines "*manufactured home site" means a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home*.

I find the weight of the evidence is that the tenant has excess belongings that infringe on other sites and overcrowd her own site as illustrated by the photographs and survey in evidence. I find this situation is causing problems for her, for the landlord and other tenants. She has had over one and a half years to remedy the situation and promises to get rid of her excess belongings by August 31, 2019 which will hopefully lower tensions in the park. Although she thinks it is the landlord's duty to move her shed and other items, I find no provision in the Act requiring a landlord to move the tenant's belongings to suit her. I find it is her responsibility to remove her belongings from property outside her site boundaries. She requests that I order the landlord to put gravel on her site as he has done on others. The landlord states he cannot put gravel onto her site until her goods are organized so there is space. I find the photographic evidence supports the landlord's position. If she wants gravel, I suggest she cooperate with his request. I dismiss this portion of her claim.

Conclusion:

I find the tenant entitled to compensation as calculated below: I dismiss the remaining claims of the tenant without leave to reapply. Her filing fee was waived.

Compensation for first 3 months internet (62x3)	186.00
Compensation for April and to May 31, 2019 (2x140)	280.00
Total compensation to Tenant	**466.00**

I HEREBY ORDER THAT THE TENANT MAY DEDUCT $466.00 FROM HER RENT IN FULL SATISFACTION OF THE COMPENSATION CALCULATED ABOVE.

I HEREBY ORDER THAT IF THE LANDLORD HAS NOT GIVEN HER THE NEW PASSWORD TO ACCESS THE WI-FI INTERNET BY MAY 31, 2019, THE TENANT MAY CONTINUE TO DEDUCT $140 A MONTH FROM HER RENT FOR EACH MONTH IT IS DENIED.

I HEREBY ORDER THE TENANT TO REMOVE HER BELONGINGS THAT ARE OUTSIDE HER OWN SITE BOUNDARY LINE AND IF SHE RETAINS ANY, TO ORGANIZE THEM INSIDE HER OWN SITE IN A TIDY MANNER.

I HEREBY ORDER THE TENANT TO NOT ENTER THE LANDLORD'S OR OTHER SITES IN THE MANUFACTURED HOME PARK UNLESS SHE HAS WRITTEN AGREEMENT FROM OTHER TENANTS OR THE LANDLORD. I HEREBY ORDER THE TENANT TO NOT CONTACT THE LANDLORD'S WIFE.

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: May 11, 2019

Residential Tenancy Branch