



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, OLC, PSF

Introduction

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

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 58;
- an order to the landlord to make repairs to the rental unit pursuant to section 55;
- an order to the landlord to provide services or facilities required by law pursuant to section 58.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on March 14, 2019. Both parties also confirmed the landlord served the tenant with the submitted documentary evidence in person. Neither party raised any service issues. As both parties have attended and confirmed receipt of the notice of hearing package and the submitted documentary evidence by the other party, I am sufficiently satisfied that both parties have been properly served as per section 90 of the Act.

Preliminary Issue(s)

It was clarified at the outset that the tenant seeks an order for the landlord to comply with a previous decision granted on April 25, 2018. In that decision, the Arbitrator ordered that the landlord remove a tree stump that was blocking access to the tenant's leeway. The tenant stated that the tree stump was removed, but debris (bricks and rocks from around the tree stump) were left behind on the tenant's leeway by the maintenance person as ordered by the landlord. The landlord confirmed that the rock and debris was moved onto the leeway out of the way during the tree stump removal.

The landlord indicated that the debris was not in the ground, but scattered around the base of the tree stump. The tenant seeks the removal of the debris from the leeway and the tenant's property by the landlord or compensation at the landlord's expense to remove it for \$75.00 which includes dump fees, time and labour. As such, I find that the tenant's request is to clarify the previous order made on April 25, 2018 for the removal of the tree stump from the property. The remaining items in the application were cancelled by the tenant as no repairs are requested nor any services or facilities not provided.

During the hearing the tenant became agitated when asked if the debris was present on the ground around the tree stump. The tenant argued that the debris should be part of the tree stump removal which led to the tenant exiting the conference call hearing prematurely. The tenant repeatedly argued that the tree stump was not removed, but grinded down to the roots.

Issue(s) to be Decided

Is the tenant entitled to an order for the landlord to comply?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks the removal of debris (rocks and bricks) as part of the order made on April 25, 2018. Both parties confirmed that a previous decision granted, order the landlord to remove a tree stump.

That decision states in part,

Section 22 of the Manufactured Home Park Tenancy Act provides that a tenant is entitled to quiet enjoyment including freedom from unreasonable disturbance and (d) use of common areas for reasonable and lawful purposes, free from significant interference. Section 24 states a landlord must not unreasonably restrict access to a park by the tenant. I find in this case the landlord is not restricting access but the weight of the evidence is that a stump, blocks and plantings are restricting access to the 3 foot easement along the side of the tenant's trailer. I find as executor it is his responsibility to protect the assets of his mother and prepare it for sale if necessary.

I find a summary of the relevant Regulations and Bylaws of the park state that

- 1. Residents are responsible for keeping their spaces clean, including keeping lots weed free, cut, raked and trimmed. Tenants must remove their own debris. Lots not kept will be put in order by the management for which a flat fee of \$25 will be charged each and every time.*
- 2. Tenants are responsible for trimming their own trees. If they are too big to handle, call the office for assistance.*

I note the tenant claims the responsibility for removing the cinder blocks, debris and bushes from his easement should be his neighbours for they made this planting in the easement. His relative neighbour denied this to the landlord. I find the park rules clearly state it is the tenant's responsibility to clear and maintain his own easement. I find he has provided insufficient evidence to shift this responsibility to his neighbour. Therefore, I find if he wants his easement cleared of old plantings and blocks, it is his responsibility to do it. He has stated he cannot afford this. I note as executor who is preserving an asset in the will, he may pass this bill on to the lawyer to be paid out of estate funds.

In respect to the tree stump in front of the easement, I find this originated from a tree cut down with assistance of park staff in 2015. Whether or not it had been allowed to grow by the previous owners over 20 years, it may or may not have been a tree originally planted by the park. I find the weight of the evidence is that the stump was left by park staff when it was cut down and it should be removed by park staff at expense of the park so that the tenant may have free access to his easement to use a dolly to maintain appliances and that side of the trailer.

I find the landlord has attempted to protect the peaceful enjoyment of the tenant which has been significantly disturbed by the ongoing dispute with this neighbour relative. The landlord's letters to the neighbour and some correcting behaviour by the neighbour support the fact the landlord has not been negligent in addressing his issues. However, the evidence indicates some legal intervention was necessary so this dispute was filed.

I note the Rules and Bylaws of the park allow the landlord to remove debris dumped by a tenant and to charge the tenant for the service. I encourage the landlord to exercise this option if they find a tenant is significantly disturbing another tenant by dumping debris on the other tenant's lot.

Conclusion:

I find the tenant responsible to clear and maintain his three foot easement. I find the landlord responsible to remove the tree stump that is blocking some access to the easement. The filing fee was waived.

I HEREBY ORDER the landlord to remove the tree stump that is blocking some access to the tenant's 3 foot easement and to inspect and ensure the neighbour is not dumping debris behind the tenant's trailer..

I HEREBY ORDER the tenant to clear and maintain his 3 foot easement.

Analysis

In this case, both parties confirmed in their testimony and as shown in the tenant's photographs page 1 (B) and page 3 (A), that the debris (rock and brick) were present prior to the tree stump removal as it is shown around the base of the tree stump. The tenant has argued that the debris should be removed as part of the tree stump removal ordered in the decision dated April 25, 2018. The landlord has disputed this claim stating that the debris was present on the ground around the base of the tree stump. The landlord stated that all debris related to the tree stump and dirt was removed. The landlord argued that the debris was not part of the tree stump removal and is the responsibility of the tenant. I find that the tenant has failed to establish a claim for the removal of the debris. In the tree stump removal process the landlord has confirmed that the tree stump was "removed" and the dirt/soil was removed as well. The undisputed testimony of both parties, in conjunction with the tenant's photographs clearly show that the debris (rock and brick) were present prior to the removal and was not part of the order.

Conclusion

The tenant's application is dismissed.

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 2, 2019

Residential Tenancy Branch