



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OLC, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to have the landlord comply with the Act, for a monetary order for loss, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

The landlord BF indicated at the start of the hearing that RM is not a landlord. That RM does maintenance on the property and they are in a relationship.

As RM is not the owner of the property, I find it appropriate to remove RM from the style of cause.

Issue to be Decided

Should the landlord be ordered to comply with the Act?
Is the tenant entitled to a monetary order for loss?

Background and Evidence

The tenancy began November 2007. Current site rent in the amount of \$294.00 was payable on the first of each month.

The tenant testified that the landlords or the landlords' worker is using a quad to drive around the property and it does not belong in the park or on the roadway. The tenant stated that there are 27 other sites and they all drive vehicles and a normal vehicle should be used other than the quad. The tenant stated they cannot sit on their patio and enjoy the property.

The tenant testified that they notified the landlords last year that they want them to stop using the quad within the park. The tenant stated that when the quad driver past their site, it is noisy, and the driver is looking onto the property.

The tenant testified that since October 3, 2019, and October 20, 2019, the landlord or their worker has driven past their property on 13 occasions. The tenant stated that this is disruptive, and they feel not necessary.

The tenant testified that there was also a gas line installed and when RM was cleaning up the driveways with a sprayer, RM cleaned the other two driveways very neat and tidy. However, the dirt on their driveway was sprayed all over. The tenant stated that the water sprayed their window, the rug on their front patio was wet, and there was also dirt. The tenant stated that the landlord is purposely harassing them.

The tenant testified that when RM plows the snow on the roadway, that they purposely leave the snow behind their vehicle, while everyone else's driveway is left clear of snow.

The landlord testified that they use a quad on the property to do maintenance and it is a working vehicle, which also pulls a utility trailer to pick up items from sites and maintain the park. The landlord stated they are not required to use a personal vehicle.

RM testified that they were cleaning up the area where a gas line was installed. RM stated that they swept the areas and used water to clean which would run downhill and create a puddle. RM stated that anytime they noticed dirt get splashed onto a manufactured home they would clean it off.

RM testified that they plow the roadway in the winter and they do not plow the snow that is close to any vehicle as it is a liability issue.

The landlord testified that the tenant has placed cameras on their site that is focus on the neighbours' home and bedroom. The landlord stated that they would like an order for the cameras to be removed.

The tenant responded that the cameras are only there to see who is coming to their front door and did not know that this was an issue.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 60 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, the tenant seeks the landlords to comply with the Act, by not driving a quad on the common roadway of the manufacture home park. However, this type of vehicle is often used for maintenance of property. I find it is not within my authority to order the landlord to use a different vehicle simply because the tenant does not like it.

Further, I do not find that using the vehicle on the common roadways a violation of the Act or a breach of the tenant's quiet enjoyment. The vehicle is used for a legal purpose within the park, such as maintenance. Simply driving past the tenant's site and looking at the tenant's site is not a breach of the Act or a breach of the tenant's right to quiet enjoyment.

While I accept the tenants, porch is on the front of their manufacture home, the tenant must expect that the landlord's vehicle will travel past the site, even if that is multiple times within a day. This is not a violation of the Act. This is a common roadway and the tenant cannot restrict the landlord's access on a common roadway simply because they feel it is more than necessary. That is not a decision the tenant has the right to make on a common roadway, as both tenants and landlords are entitled to unrestricted access.

Further, RM was cleaning an area of multiple sites after a gas line was installed. Just because it was not done to the tenant's satisfaction does not mean the landlord is purposely harassing them. If there was a problem with their front porch getting water or dirt splashed on it, it was the tenant's responsibility to let the landlords know. I am not satisfied that this was done with any malicious intent.

Furthermore, I am not satisfied that the landlords are harassing the tenant on purpose when they plow the roadway for the removal of snow. Simply because there is a small pile of snow left behind the tenant's vehicle, from an area the snow plow did not reach does not support harassment or a violation of the Act.

Additionally, the small amount of snow shown in the photograph may be on the tenant's site, which may be there responsibility. Often snow plows when clearing snow from the roadway, will leave snow along the edge of the road, and driveways. This is often seen on any public

roadway after the snow plow has passed through. Simply because other driveways were plowed better than the tenants, is not a breach of the Act, this could be because their vehicles were not home at the time or they may have made alternate arrangement with the landlord's worker to pay for additional snow clearing or the occupant may have removed the snow on their own.

Based on the above, I am not satisfied that the landlords have violated the Act. Therefore, I find it not necessary to order the landlords to comply with the Act. As the tenant has not proven a violation of the Act, I find the tenant is not entitled to monetary compensation. As the tenant was not successful with their application, I decline to award the recovery of the filing fee.

In this case, the landlords seek the tenant to remove the cameras from the site; however, that application is not formally before me. However, I do note from the tenant's photographic evidence show that their security camera clearly is focused on their neighbours' home, while I accept this is not intentional and that the tenant was unaware of the concern, it is a privacy issue that the tenant needs to correct.

The tenant was cautioned that they need to adjust any cameras on their site, that they are not focused on their neighbours' home, as this could be a violation of their neighbours' rights to privacy.

Conclusion

The tenant failed to prove a violation of the Act by the landlord. The tenant's application is dismissed 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 *Manufacture Home Park Residential Tenancy Act*.

Dated: October 21, 2019

Residential Tenancy Branch