



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ZAM ENTERPRISE LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code LRE OLC PSF RP RR MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on September 4, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Manufactured Home Park Tenancy Act* (the "Act"):

- an order suspending or setting conditions on the Landlord's right to enter the rental unit or site;
- an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement;
- an order requiring the Landlord to provide services or facilities required by the tenancy agreement or law;
- an order requiring the Landlord to make repairs to the unit, site, or property;
- an order that rent be reduced for repairs, services or facilities agreed upon but not provided;
- a monetary order for money owed or compensation for damage or loss;
- an order granting recovery of the filing fee.

The Tenants attended the hearing and were assisted by N.G., an advocate. The corporate Landlord was represented at the hearing by A.K., an agent. The Tenants and A.K. provided affirmed testimony.

The Tenants testified the Notice of Dispute Resolution Proceeding package and a subsequent documentary evidence package were served on the Landlord by registered mail on September 9 and 11, 2019, respectively. On behalf of the Landlord, A.K. acknowledged receipt of 4 packages around that time. On behalf of the Landlord, A.K. testified that a single documentary evidence package was served on the Tenants by registered mail. The Tenants acknowledged receipt. No further issues were raised with respect to service or receipt of the above packages or the evidence referred to during

the hearing. The parties were in attendance or were represented and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issues to address are related to the use of land and the need for repairs to fencing. Accordingly, I find it appropriate to exercise my discretion to dismiss the following aspects of the Tenants' Application, with leave to reapply:

- an order suspending or setting conditions on the Landlord's right to enter the rental unit or site;
- an order that rent be reduced for repairs, services or facilities agreed upon but not provided; and
- a monetary order for money owed or compensation for damage or loss

In addition, the parties agreed to amend the Application to remove the name of the individual Landlord. Pursuant to section 57(3)(c) of the *Act*, the Application is amended accordingly.

Issues to be Decided

1. Are the Tenants entitled to an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement;
2. Are the Tenants entitled to an order requiring the Landlord to provide services or facilities required by the tenancy agreement or law?
3. Are the Tenants entitled to an order requiring the Landlord to make repairs to the unit, site, or property?
4. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The Tenants own a manufactured home that is located in a manufactured home park operated by the Landlord. The tenancy agreement submitted into evidence confirms the tenancy began in February 2007. The Tenants were uncertain about the precise amount of rent due but A.K. stated that rent in the amount of \$344.40 per month is due on or before the first day of each month. The Tenants did not pay a security deposit or a pet damage deposit, in accordance with the *Act*.

The Tenants' primary issue is related to use of a disputed area of land located adjacent to their manufactured home. The Tenants testified that when the manufactured home was purchased the site on which it was located was advertised as a "fenced double lot". In support, the Tenants submitted a copy of the realtor's listing which included this description. Since purchasing the manufactured home roughly 12 years ago, the Tenants have had exclusive use of the fenced area. The Tenants testified they were not provided with a map depicting the boundaries of the manufactured home site with their tenancy agreement. They have always believed the disputed area was included.

The Tenants testified that the dispute arose when they were asked to relocate a shed located on the disputed area, which they did. The Tenants testified they were also asked to remove the fence that enclosed the disputed area. They refused to remove the fence and on or about August 8, 2019 the Landlord did so.

In reply, A.K. did not dispute that the Tenants have enjoyed exclusive use of the disputed area since their tenancy began, or that the fence was removed by the Landlord as alleged. It was also not disputed that a length of fence extended from the northwest corner of the Tenants' site to the northeast corner of the Landlord's structure as depicted on the site map. A length of fence also extended from the southwest corner of the Tenants' site to the southeast corner of the Landlord's structure. The eastern wall of the Landlord's structure formed the western boundary of the Tenants' lot. However, the Landlord relied on a site map submitted into evidence. It depicts the Tenants' site in relation to several other sites and the Landlord's structure. The site map indicates the boundary of the Tenants' site does not include the disputed area. Accordingly, A.K. submitted that the Landlord was entitled to remove the fence to ensure adequate access to the Landlord's structure so repairs and improvements could be made. Specifically, A.K. stated that a strip of land extending 7-1/2 feet from the eastern side of the Landlord's structure was required for this purpose.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 55(3) of the *Act* empowers 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.

With respect to the Tenants' request for exclusive use of the disputed area, I find that the realtor's listing created the mistaken belief that the Tenants were entitled to a "fenced double lot" that included the disputed area. However, I find that the disputed area was enclosed by a fence and that the Tenants have enjoyed exclusive use of the disputed area since the tenancy began more than 12 years ago. Further, I find it is unlikely that the Tenants were provided with documentation confirming the boundaries of the site with the tenancy agreement, as required under section 12 of the *Residential Tenancy Regulation*. There is also insufficient evidence before me that the Landlord has taken any steps during the tenancy to clarify the site boundary, until recently.

Estoppel is a legal principle which bars a person from asserting a legal right due to that person's actions, conduct, statements, admissions, or failure to act. In this case, I find the Landlord is estopped from relying on the site map to reduce the area available to the Tenants due to the Landlord's failure to act previously. Accordingly, I find the Tenants are entitled to continued use of the disputed area and I order the Landlord to provide such use.

With respect to the Tenants' request for the replacement of the fence removed by the Landlord, I find it was not reasonable for the Landlord to remove the fence that enclosed the disputed area, particularly when the terms of the tenancy agreement and the use of the disputed area was contested. Therefore, I find the Landlord's removal of the fence was premature. Therefore, I order the Landlord to replace the fence removed on or about August 8, 2019 at the Landlord's expense.

Nothing in this decision is to be construed as limiting the Landlords right to access the site in accordance with section 23 of the *Act*.

Having been successful, I find the Tenants are entitled to recover the filing fee paid to make the Application. Therefore, I order that the Tenants may retain \$100.00 from a future rent payment at their discretion.

Conclusion

As described above, I order the Landlord to restore use of the dispute area to the tenants and to replace the fence that was removed on or about August 8, 2019.

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: November 6, 2019

Residential Tenancy Branch