



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDC

This hearing was reconvened from the original hearing held September 24, 2019 in response to an application by the Tenant pursuant to the *Manufactured Home Park Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the Landlord’s compliance - Section 55; and
2. A Monetary Order for compensation - Section 60.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms that the Landlord’s email address as set out in the application is correct.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to orders for the Landlord’s compliance with the Act or tenancy agreement?

Preliminary Matter

At the original hearing the Landlord states that it did not receive the Tenant’s evidence until September 12, 2019. The Landlord states that it has had opportunity to review the evidence package and accepts that evidence other than the included reference letters. The Tenant states that the reference letters could have been served to the Landlord sooner than done.

Rule 2.5 of the Residential Tenancy Branch (the “RTB”) Rules of Procedure an applicant should submit copies of all evidence to be relied on in the proceedings at the same time as the application is submitted. Rule 3.11 of the Rules provides that unreasonable delay on the submission and service of evidence may result in a refusal to consider that evidence. Since the reference letters could have been provided earlier and based on the undisputed evidence that the Landlord was given this evidence late, I decline to consider the reference letters for the purposes of the Tenant’s claims. As the Landlord does not object to the remaining evidence this evidence will be considered.

The Interim Decision dated September 24, 2019 and sent to the Tenant on that day by email, sets out that no further evidence would be considered for the reconvened hearing. At the reconvened hearing the Tenant confirmed that the Tenant submitted additional evidence in November 2019. Given the restriction on further evidence as set out in the Interim Decision and as the evidence was provided after receipt of the Interim Decision, I decline to consider this evidence.

Background and Evidence

The following are agreed facts: The tenancy started on August 10, 2015. Rent of \$511.00 is payable on the 15th day of each month.

The Tenant claims \$20,000.00 for pain and suffering, loss of privacy, loss of quiet enjoyment, and harassment. The Tenant claims \$494.10 for other compensation.

Compensation for \$20,000.00

Loss of trees: The Tenant states that on December 10, 2018 the Landlord cut down trees around the Tenant’s site removing all privacy that the Tenant previously enjoyed since the onset of the tenancy. The Tenant states that the Landlord had no permit to cut the trees and was issued a fine. The Tenant argues that had the Landlord sought a permit they would not have been allowed to cut as much as done. The Tenant states that the branches cut by the Landlord had been down to the ground and that this was an

area of loitering and drug use. The Tenant states that the tree cutting has not reduced these incidents. The Tenant states that it always kept that area cleaned and cleared due to the drug users and that the Tenant did not ask the Landlord to remove or clean the area. The Tenant states that from 5 feet up the trees used to be solid branches.

Harassment: The Tenant states that the Landlord's brother, sent on the Landlord's behalf to the Tenant, screamed at the Tenants over the trees. The Tenant states that the Landlord also harassed the Tenant about the Tenant's complaints about another Tenant's habit of parking its care in a manner that blocks other cars. The Tenant states that the manager once screamed at the Tenant. The Tenant states that 2 years ago the Landlord's friend removed city blocks and yelled at the Tenant. The Tenant claims \$20,000.00 for breach of its right to privacy and quiet enjoyment in relation to the trees and the Landlord's behavior.

The Landlord states that the trees are not on the Tenant's site and that the Landlord is responsible for maintenance of the area. The Landlord states that the Tenant requested that the Landlord only take care of trees selected by the Tenant. The Landlord states that a professional was used to determine the extent of the trimming and maintenance. The Landlord states that it trimmed all of the lower branches and saplings for reasons of maintenance, cleanliness and safety due to high winds. The Landlord denies that this affects the Tenant's privacy and states that during the winter months the Tenant does not have the same coverage since the leaves on the trees are no longer there. The Landlord argues that once the trees have their leaves the Tenant has both shade and extra privacy.

The Landlord denies harassing the Tenant. The Landlord states that the neighbour does park on its own side and leaves ample room. The Landlord states that on once occasion the Tenant parked its care behind the neighbour's car to make a point. The Landlord states that it attended the Tenant's unit on one occasion to resolve the parking

issues and simply told the Tenant to move its car. The Landlord states that nobody else ever attended the Tenant's unit other than to deliver items to the Tenant's mail box.

Other Compensation

The Tenant states that because of the trees being cut the Tenant experienced extremely high winds and had to cover a vent on the roof. The Tenant claims \$62.58 for this cost. The Landlord states that every resident commonly faces very high winds to as much as 70 km per hour. The Landlord states that the Tenant should know to close vents on windy days. The Landlord states that trimming the trees has not increased the winds to the Tenant's site and that other sites with no trees experience the same wind.

The Tenant states that due to the trees being cut extra light comes into the unit between the months of March to September and as a result the Tenant has had to purchase extra blinds. The Tenant states that it has severe brain disease and cannot tolerate heat. The Tenant states that as a result of the tree cutting the Tenant experiences more heat in the unit. The Tenant claims \$283.05 as the costs of these blinds. The Landlord states that the Tenant may have a bit more sunshine as a result of the tree trimming however the Tenant's site is the only site with any or greater shade than all the other sites. The Landlord states that it cannot guarantee shade and that the Tenant gets sufficient shade.

The Tenant states that it has been applying sealant to the lower branches of the trees including to the branch areas that were cut. The Tenant claims \$32.48 for this cost. The Landlord states that it was not given any information about tree sealant until this dispute.

The Tenant states that no fence between its site and its neighbour's site existed at the onset of the tenancy. The Tenant states that at move-in and after signing the tenancy agreement the previous owner had informed that Tenant that a retaining wall would be around the Tenant's site. The Tenant states that 2.5 years ago the current owner also

promised to provide a fence around the site. The Tenant states that this has resulted in no privacy for the Tenant. The Tenant states that it is not sure if the Landlord is required to have a fence between itself and the neighbour. The Parties agree that the Tenant was given permission to install a fence between the Tenant's site and the neighbour's site. The Tenant states that the Tenant installed a fence with the Landlord's permission and claims \$116.02 for the cost of materials. The Landlord states that the Tenants was given permission to install a fence because the Tenant was in conflict with the neighbour for a long time. The Landlord states that the Tenant has not provided any letter from the Landlord setting out any agreement. The Landlord argues that they are not responsible for this cost as the Tenant chose to do so. The Landlord states that the rules of the park set out that if a tenant wants to install a fence it must obtain park approval and be limited to the size set out in the park rules. The Landlord states that this rule is silent on costs.

Orders for Compliance

The Tenant states that during 2017 and 2018 the Landlord failed to clear the snow from the roads around the Tenant's site and that only the front of the park was plowed. The Tenant states that several tenants were told that the Landlord did not have the budget to clear all the roads. The Tenant states that the ability to leave or return to the site has been impeded and that the Tenant has had to use sale to get to the main road. The Tenant states that on March 3, 2018 and for three weeks the Landlord left the road around the site with ice resulting in the Tenant becoming constantly stuck. The Tenant argues that the Landlord is not meeting the standard of cleaning required and seeks an order for such compliance. The Landlord agrees that they are required to maintain the roads. The Landlord states that all the roads are plowed, even including personal spaces, and that the only areas of the roads not able to be plowed are on the areas that cars are parked. The Landlord states that the Tenant has not given supporting evidence of getting stuck or an ability to get in or out and that the Tenant is only complaining about the quality of the snow plowing. The Landlord provides copies of a log book setting out dates of snow plowing along with one complaint made by the

Tenant on February 23, 2019. The Landlord states that the Tenant complained that the job done earlier in the day was not good, so the Landlord had the plow return. The Landlord states that they are in compliance with their requirements to maintain the roads. The Tenant refers to a photo provided as evidence dated February 23, 2019 showing incomplete snow removal. The Tenant agrees that the plow did return after its complaint.

The Tenant states that its site is on city property and that the city granted the use of this area to the Landlord. The Tenant states that garbage was dumped in an area that circles the site causing extra weeds and that as a result the Tenant has to keep the area clean. The Tenant seeks an order that the Landlord remove the mound. The Tenant provides a copy of the tenancy agreement and I note that section 1 of the attached Rules provides that Tenants are required to maintain their site free of weeds.

The Landlord agrees that they are required to maintain the dirt mound area and that this area is 365 meters away from only one side of the Tenant's site. The Landlord states that the dirt mound has been present for the past two years and is still present. The Landlord states that they have weekly site cleaning services and that although there was a lapse in that cleaning this past summer, the situation was rectified in two weeks and that the Landlord is in compliance with maintaining the weeds. The Landlord also states that the area containing the dirt mound is not part of city property but is on the owner's private property and that the Landlord is therefore not required to remove the mound. The Tenant states that the mound is on park property and refers to a city map.

The Tenant states that the Landlord has been on the Tenant's site to remove trees without giving the Tenant notice of being on the site. The Tenant is not sure if the Landlord was given permission to be on the site at the time. The Tenant asks for an order that the Landlord comply with providing notice to the Tenant when on the Tenant's site. The Landlord agrees to provide the Tenant with notice whenever they are on the Tenant's site to carry out business off the site.

Analysis

Section 7(1) of the Act provides that 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. Section 22 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, reasonable privacy and freedom from unreasonable disturbance. Given the undisputed evidence that the trees are not on the Tenant's site and therefore not a part of the tenancy agreement for that site, I find that the Tenant has not substantiated that the Landlord breached the tenancy agreement. The Tenant's evidence of permit requirements is not relevant to whether or not the Landlord breached the Tenant's right to privacy. Given the Landlord's evidence that the lower branches of the trees were merely trimmed and the Landlord's evidence of usual wind and sun I find on a balance of probabilities that the Tenant has not provided sufficient evidence to substantiate that the Landlord breached the Tenant's rights under the Act. I therefore dismiss the Tenant's claim for compensation in relation to the trees, and blind costs claimed including the vent

Harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". As there is only evidence of a couple of incidents that occurred over a period of a couple of years, I find that the Tenant has not substantiated that the Landlord carried out a course of unwelcome conduct and I dismiss the Tenant's claim for compensation for harassment.

As there is no evidence that the Landlord either required or agreed to the Tenant's application of sealant to the trees, I find that the Tenant has not substantiated that the Landlord has breached either the tenancy or the Act and I dismiss the costs claimed for the sealant. As there is no evidence of any requirement under the tenancy agreement for the provision of a fence and as there is not evidence that the Landlord's permission

to install a fence contained any agreement to assume any costs for such installment I find that the Tenant has not substantiated a breach by the Landlord and I dismiss the costs claimed for the fence.

Given the Landlord's evidence of snow plowing, that the Landlord only received on complaint from the Tenant about the sufficiency of the snow removal and the Tenant has not provided supporting evidence of being stopped from entering or leaving the site, I find that the Tenant has not provided evidence that the Landlord has been out of compliance with its obligations to maintain the roads on the Park. I therefore dismiss the claim for compliance in relation to snow removal.

Regardless of the ownership of the land containing the dirt mound, given the Landlord's evidence of maintenance requirement for that area, I find on a balance of probabilities that the Landlord is responsible for ensuring that the mound is not left without maintenance, in particular with weed removal from the area. Based on the Landlord's evidence that there was a gap in maintaining the area but that this was shortly thereafter rectified, I find that the Tenant has not substantiated that the Landlord breached its obligations to maintain the area. Given the Landlord's evidence that the area is owned by the owner of the Park and as the Tenant only provided a city map to show who has ownership of the area, I decline to make any order to remove the mound. Should the Tenant's obligation to keep its yard free of weeds be limited by any future lack of weed maintenance of the mound area and should this lack of maintenance cause the Tenant any increased cost in relation to the Tenant's obligation to maintain its own site, the Tenant remains at liberty to seek compensation.

Given the Landlord's agreement to give notice to the Tenant should the Landlord require being on the Tenant's site for off-site obligations I dismiss the Tenant's claim for an order of compliance and give the Tenant leave to reapply for compensation should the Landlord act out of compliance with the notice provisions of the Act.

Conclusion

The Tenant's claims for compensation are dismissed. The Tenant's claims for compliance orders are dismissed. The Tenant has leave to reapply for compensation in relation to notice requirements not being met subsequent to this decision.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 9, 2019

Residential Tenancy Branch