



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREEN BAY LANDING INC.
and[tenant name suppressed to protect privacy]

DECISION

Dispute Codes O, FFL

Introduction

This hearing dealt with a landlord's application for an order for the tenants to comply with the manufactured home park rules. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The hearing was held over two dates and an Interim Decision was issued on December 19, 2019. The Interim Decision should be read in conjunction with this decision.

At the commencement of the reconvened hearing, I confirmed that the parties had served each other with the additional documents that were submitted to me during the period of adjournment; however, I determined that neither party was able to locate or obtain a copy of the tenancy agreement. Accordingly, this decision is made without a copy of the written tenancy agreement.

Issue(s) to be Decided

Are the tenants in violation of a park rule and if so, is the park rule enforceable against the tenants?

Background and Evidence

The following facts were not in dispute. In approximately May 1995, the tenants purchased the manufactured home from its former owners and the tenancy agreement the former owners had with the former landlord was assigned to them starting June 1995. The tenants are currently paying rent in the amount of \$501.06 due on the first day of every month.

The current landlord purchased the manufactured home park in approximately 2004 or 2005. The agent appearing before me has been employed as the park manager since September 2017.

Neither the landlord, nor the tenants, have a copy of the written tenancy agreement although the tenants stated there was a written tenancy agreement that existed when they purchased the manufactured home site and the agreement was assigned to them. The tenants reviewed the documents they had from the time they purchased the manufactured home and a tenancy agreement was not with those documents. The landlord's agent stated that she looked for the tenancy agreement and could not find it in the landlord's records. The landlord's agent pointed out that there were no written tenancy agreements in the records for several other tenants.

The manufactured home park is located on a canal and several tenants, including the tenants before me, have boats that are moored in the water during boating season. In the off-season the tenants have been parking their boat and boat trailer on a gravel parking pad located on their manufactured home site.

The crux of this dispute surrounds the landlord's request that when the tenants' boat is not moored in the water, the tenants store their boat in the storage facility located in the manufactured home park, at a cost of \$40.00 per month, or store their boat off the property. The tenants object to this request.

The landlord points to the following park rule, that forms part of a document dated January 1, 2018 that provides for several park rules, that the tenant are not permitted to park their boat/boat trailer on the manufactured home site. The landlord seeks an order that the tenants comply with this rule. Under rule 6, paragraph 4 of the park rules it states the following:

Parking of tents, travel trailers, RVs, motor homes, utility trailers and campers is forbidden on mobile home site. Storage of boat/trailer may be allowed by prior arrangement with the Manager.

Both parties provided consistent evidence that the park rule described above has been in existence since the landlord purchased the property in 2004 or 2005.

The landlord's agent was of the position that the second sentence of the rule reproduced above is intended to mean that a tenant may be given permission to use the storage facility to park their boat/boat trailer with prior approval of the park manager. The landlord's agent stated that she could think of no situation where she would permit

tenants to park their boat/boat trailer on their manufactured home site as she considers that to be a fire hazard. The landlord's agent also submitted that parking of a boat/boat trailer may impede the ability to bring a fire truck down the roadway.

The tenants objected to the landlord's interpretation of the second sentence in the park rule and submitted that it means the tenants could obtain prior permission of the manager to park a boat/boat trailer on the manufactured home site. The tenants further submit that they did obtain such permission from the former park manager when the current landlord purchased the property in 2004 or 2005 and brought in this rule. The tenants testified that when the current landlord purchased the property, the park manager at that time required that the tenants install a gravel parking pad to park the boat/boat trailer, which they did at their expense, and they have been using that spot to park the boat/boat trailer in the off-season since then. A few years ago, a subsequent park manager opposed the tenants parking of their boat/boat trailer on the manufactured home site and filed an Application for Dispute Resolution but then cancelled the hearing which the tenants interpreted as meaning that park manager approved of their on-going use of the gravel pad to park their boat/boat trailer. As such, the tenants are of the position they were given prior approval to park their boat/boat trailer on the manufactured home site, provided it was parked on the gravel pad, and they are in compliance with the park rule. The tenants question whether it is reasonable that every time there is a change in manager that they have to seek permission again.

The tenants denied that their boat/boat trailer impedes the ability of traffic or fire trucks to navigate the roadway and they provided photographs to demonstrate their position.

The tenants are of the position that the current landlord is motivated to receive more money through storage fees. I asked whether the landlord was agreeable to waiving the storage fee so as to motivate the tenants to use the storage facility to which the agent responded that she was not authorized to agree to that. The landlord's agent submitted that this application is motivated by the landlord wanting to "clean up" the property and apply the park rules consistently to all tenants. Currently, all other tenants are using the storage facility to store their boats off-season.

As for the tenants having prior authorization to park their boat/trailer on the site, the landlord's agent submitted that there is no written record of such authorization in the landlord's records.

The tenants pointed out that every tenancy agreement is unique and as an example pointed out that some tenants are required to pay for water while they are not and their

tenancy agreement goes back to when the manufactured home park opened so their agreement may be very different than the newer tenancy agreements. As for wording of the original tenancy agreement and storage of boats/boat trailers on the manufactured home site, the tenants indicated that they read the agreement so long ago they could not recall what it said specifically.

The landlord acknowledged and agreed that every tenancy agreement is potentially unique but that she seeks consistency by way of enforcing the park rules that apply to every tenant.

The tenants also cited inconvenience as a reason they do not want to use the storage facility as it is locked. The landlord's agent testified that the storage facility is locked and that only she and the maintenance person have a key. If tenants want access to their boats she explained that they would request access from her when she is on-site but that they have to make prior arrangement with her, with sufficient advance notice, for times when she is off-site.

Both parties pointed to previous dispute resolution proceedings involving other tenants in support of their respective positions.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

It is undisputed that the tenants have been parking their boat/boat trailer on a gravel pad on their manufactured home site during the off-season for many years. The landlord wants the tenants to stop doing so and use the storage facility or move the boat off the property and points to the following rule as being the basis for requiring this.

Parking of tents, travel trailers, RVs, motor homes, utility trailers and campers is forbidden on mobile home site. Storage of boat/trailer may be allowed by prior arrangement with the Manager.

The first issue before me is whether the tenants are already in compliance with the park rule, as submitted by the tenants. The tenants focus on the second sentence of the rule in particular as a basis for their position; however, the parties presented a different interpretation of the second sentence in support of their respective position and I turn my mind to the interpretation of the rule.

In contract law, a term is to be clearly written and unambiguous so as to clearly convey the obligations of a party. This is consistent with the requirement of section 30(3) of the Manufactured Home Park Regulations, which provides requirements for making park rules. Section 30(3)(b) requires that a park rule "is clear enough that a reasonable tenant can understand how to comply with the rule".

In reading the subject rule, I find a reasonable person would interpret the second sentence to mean a tenant may store their boat/trailer on the manufactured home site with prior arrangement of the park manager. I make this finding as the first sentence of the rule specifically forbids parking of certain items on the manufactured home site without mention of boats/boat trailers. I find that it follows logically, especially considering boating is a common activity for occupants of this park, that parking of boats/boat trailers on the manufactured home site is addressed in the sentence that follows. I am of the view that if boat/boat trailer parking on the manufactured home site were prohibited it would have easily been addressed in the first sentence. Therefore, I find I prefer the tenant's interpretation of the subject rule.

In light of the above finding, I turn my mind to the tenants' position which is that they are in compliance with the rule because they did make prior arrangement with management and obtained approval from the manager(s) prior to the current manager. As evidence of this the tenants describe how the former manager required the tenants to construct a gravel pad for parking of their boat/trailer after the current landlord purchased the property in 2004 or 2005 and they constructed it and have used the gravel pad to park their boat/trailer in the off-season ever since. I find the tenant's description of events to be sufficiently detailed and credible considering they expended their own time, effort and money to construct the gravel pad starting shortly after the current landlord purchased the property and were using it to park their boat/boat trailer in the off season for several year without issue. The current manager appearing before me could not refute that such permission was given orally by the landlord's former manager and only pointed out that nothing existed in the landlord's written records; however, the rule does not require written permission be given or obtained and I accept that it was given orally. Further, the lack of a written record does not satisfy me that permission was not given considering the landlord's records are lacking in a number of areas, including tenancy agreements for several tenants.

All of the above considered, I find the tenants are permitted under the rule to park their boat/boat trailer on the manufactured home site if they obtained prior approval of the manager and I find that they did in fact obtain the approval from a former manager to do so. Therefore, I find the tenants are in compliance with the rule.

Having found the tenants are in compliance with the park rule, it is unnecessary for me to further analyze whether the park rule conflicts with the tenancy agreement.

Having found the tenants are in compliance with the park rule, the landlord's application is dismissed.

Conclusion

The tenants are in compliance with the park rule and the landlord'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: February 28, 2020

Residential Tenancy Branch