



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding YENIK REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on February 20, 2020, wherein the Landlord sought an Order that the Tenant comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation* and the residential tenancy agreement.

The hearing of the Landlord's Application was scheduled for 9:30 a.m. on April 20, 2020. Only the Landlord's representatives, D.C. and C.Y. called into the hearing. D.C. gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 9:55 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's Agents and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. D.C. testified that they served the Tenant with the Notice of Hearing and the Application on February 21, 2020 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Accordingly, I find the Tenant was duly served as of February 26, 2020 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord's Agent and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Application was filed under the *Residential Tenancy Act*. D.C. confirmed that the Tenant owns the manufactured home and rents a manufactured home site from the Landlord. Accordingly, the tenancy is governed by the *Manufactured Home Park Tenancy Act* (the "*Act*"). Section 57(3)(c) of the *Act* allows me to amend an Application for Dispute Resolution, as such, I amend the Landlord's Application to correctly identify this dispute as under the *Manufactured Home Park Tenancy Act*.

D.C. confirmed the Landlord's email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issue to be Decided

Should the Tenant be ordered to comply with the *Manufactured Home Park Tenancy Act*, the *Manufactured Home Park Tenancy Regulation*, and the residential tenancy agreement?

Background and Evidence

D.C. testified that they have had ongoing issues with the Tenant's failure to clean up his manufactured home park site and comply with his tenancy agreement and the Park Rules. The tenancy agreement and Park Rules were provided in evidence before me. D.C. testified that the Tenant signed the 2017 version of the Park Rules but has refused to sign the 2019 version.

In the Application the Landlord asked for an Order that the Tenant clean up his manufactured home site as per the Park Rules. The Landlord also asked for an Order that the Tenant remove the Gazebo that he erected without the Landlord's permission. The Landlord also asked that the Tenant be ordered to remove the aluminum from his windows as per the Park Rules (Amendment).

Introduced in evidence by the Landlord were numerous warning letters sent to the Tenant, as well as photos of the manufactured home site. D.C. testified that despite the number of letters sent to the Tenant, he simply ignores the Landlord's warnings and requests.

The Landlord also included copies of the warning letters sent to the Tenant relating to the condition of his manufactured home park site (dated: November 28, 2017, February 5, 2018, March 12, 2018, May 17, 2018, May 24, 2018, September 21, 2018, August 13, 2019, March 7, 2019, May 15, 2019, September 5, 2019, January 8, 2020 and January 29, 2020). In these letters the Landlord requests that the Landlord clean up his manufactured home site, as well as giving him specific instructions and deadlines. In a letter dated May 15, 2019 the Tenant was asked to remove the gazebo from his property. In each of the letters the Tenant was reminded of the requirement that he comply with the Park Rules; in some instances, the Tenant was provided additional copies of the Park Rules as an attachment to the warning letters.

The Landlord also provided written submissions wherein the Landlord wrote that they have received numerous complaints from other neighbours as to the condition of the manufactured home park site. The Landlord included some of the written complaints in evidence before me. In one letter the writer describes the manufactured home site as being used by the Tenant for the storage of items rather than a residence. One neighbour described the manufactured home site as a "junk yard". In another letter, a neighbour describes the gazebo as being used as a storage shed. In another the writer describes the manufactured site as full of tarps, old cars, a run-down gazebo and "sheds all over".

Analysis

After consideration of the Landlord's undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

Part 4 of the *Manufactured Home Park Tenancy Regulation* provides for the making of Park Rules and reads as follows:

Part 4 — Park Rules

Disclosure

29 (1) Prior to a person's entering into a tenancy agreement with a landlord, the landlord must disclose in writing to that person all rules in effect at the time of his or her entering into the tenancy agreement.

(2) Subsequent to a tenant's entering into a tenancy agreement with a landlord, the landlord must give notice in writing to that tenant of any rule at least two weeks before the rule becomes effective.

Making rules

30 (1) The park committee or, if there is no park committee, the landlord, may establish, change or repeal a rule if it is reasonable in the circumstances and if the rule has one of the following effects:

- (a) it promotes the convenience or safety of the tenants;
- (b) it protects and preserves the condition of the manufactured home park or the landlord's property;
- (c) it regulates access to or fairly distributes a service or facility;
- (d) it regulates pets in common areas.

(2) If there is a park committee, the rules must be established, changed or repealed according to the procedure set out in sections 22 [*park committee decisions*] and 23 [*vote by landlord and tenants*].

(3) A rule established, or the effect of a change or repeal of a rule changed or repealed, pursuant to subsection (1) is enforceable against a tenant only if

- (a) the rule applies to all tenants in a fair manner,
- (b) the rule is clear enough that a reasonable tenant can understand how to comply with the rule,
- (c) notice of the rule is given to the tenant in accordance with section 29 [*disclosure*], and
- (d) the rule does not change a material term of the tenancy agreement.

Limits to rules regarding pets

31 A rule that prohibits a pet does not apply to a pet living with a tenant or resident at the time the rule is passed and which continues to live there after the rule is passed.

When this tenancy began the Tenant was provided a copy of the Park Rules as required by the *Regulation*. The evidence before me indicates the Tenant signed these Park Rules on August 18, 2017.

I am satisfied that when the Park Rules and Regulations were amended on March 1st of 2019 (the “Amended Park Rules”), the Landlord provided the Tenant a copy of the Amended Park Rules and requested his signature. I accept D.C.’s testimony that the Tenant failed to sign the Amended Park Rules as requested by the Landlord.

Clause 5 of the Amended Park Rules sets out the rules with respect to “Landscaping and Fencing” and provides specific instruction to the tenants of the park with respect to the appearance of their manufactured home sites. Clause 10 deals with “Accessory Structures and Equipment” and again provides detailed instructions to the Tenants as to the Landlord’s expectations in this regard. Clause 14 sets out the Rules with respect to “Traffic and Parking”. Each of the clauses in the Rules are clear in terms of the Tenant’s obligations.

Clause 24 of the Amended Park Rules provides that a Tenant who breaches the Park Rules may receive a Notice to End Tenancy.

Based on the evidence before me, and in particular the warning letters to the Tenant, the letters from his neighbours and the photos submitted by the Landlord, I find the Tenant has failed to comply with the Amended Park Rules as they relate to the condition of his manufactured home site.

I am also satisfied, based on the evidence before me that the Tenant failed to obtain the Landlord’s consent prior to erecting his gazebo. Although the Landlord initially asked the Tenant to move the gazebo to the back of his property, as required by Park Rule 10(f), I am satisfied the Tenant has failed to comply with the Landlord’s requests and has now allowed the gazebo to be covered in a tarp and a collection area for scrap material and refuse.

I am also satisfied that the Tenant has failed to remove aluminum from his windows as requested by the Landlord.

Pursuant to section 55 of the *Manufactured Home Park Tenancy Act* I Order as follows:

1. The Tenant shall comply with the Amended Park Rules (March 1, 2019).
2. By no later than May 6, 2020, the Tenant shall sign the Amended Park Rules (March 1, 2019) and provide a signed copy to the Landlord.
3. By no later than May 22, 2020, the Tenant shall remove the gazebo from his property as well as the aluminum from his windows.

The Tenant is reminded that continued failure to comply with the Amended Park Rules may result in the Landlord issuing a Notice to End Tenancy pursuant to section 40 of the *Manufactured Home Park Tenancy Act*.

Conclusion

The Landlord's request for an Order that the Tenant comply with the Amended Park Rules (2019) is granted.

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: April 22, 2020

Residential Tenancy Branch