



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes LRE, RR, FFT, OLC

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for July 16, 2020.

This hearing dealt with the tenants' application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 58;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 55;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 63; and
- authorization to recover the filing fee for this application, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The interim decision dated July 16, 2020 noted the requirements for service of the hearing documents for both parties. The landlord's agent acknowledged receipt of all hearing documents, and was ready to proceed with this matter. The tenants also acknowledged receipt of the landlord's evidence for this hearing, and was ready to proceed.

Issues(s) to be Decided

Are the tenants entitled to an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to an order for the landlord to comply with the *Act*?

Are the tenants entitled to an order to suspend or set conditions on the landlord's right to enter the rental units?

Are the tenants entitled to recover the cost of the filing fee from the landlord for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

The tenants have resided in this manufactured home park since January 31, 2007. Monthly rent is set at \$344.40, payable on the first of every month. In a previous decision dated April 24, 2020, the arbitrator granted the tenants an ongoing rent reduction in the amount of \$150.00 from August 2019 “until the fence is repaired/replaced, as previously ordered in the October 2019 hearing”. The tenants were granted a monetary order in the amount of \$1,350.00 in satisfaction of the rent reduction from August 2019 to April 2020, plus recovery of the \$100.00 filing fee. The arbitrator ordered that “the Tenants may withhold \$150.00 from monthly rent until the fence has been repaired, as previously ordered”. In the decision dated November 6, 2019, the arbitrator ordered that the landlord “restore use of the dispute area to the tenants and to replace the fence that was removed on or about August 8, 2019”. Following a clarification request, the arbitrator stated in the clarification decision dated November 12, 2019 that “the fence must be replaced as soon as reasonably possible, and in any event, no later than December 31, 2019”.

The tenants filed this application as the landlord has failed to comply with the previous orders as summarized above. The tenants testified that the landlord has replaced the fence with a different structure, specifically a temporary wire fence, which is not of the same composition, height, or function as the fence that was removed. The tenants testified that they require a specific type of enclosure for their dogs.

The tenants are also concerned about the landlord's threats and harassment towards them, including accessing their yard without proper notice. The tenants are requesting an order to suspend or set conditions on the landlord's access to this area. The tenants testified that they were fearful of the landlord and their agents after repeated threats and letters from the landlord, which included painting an orange line across the yard, which the tenants were told not to cross. The tenants testified that in August of 2020 the landlord's agent JK threw rocks at their dog, and have shown general hostility towards them, and by publicly shaming them.

The tenants testified that the landlord has refused to comply with the monetary order, and has not received the \$1,450.00 payment as ordered. The tenants testified that when they had attempted to reduce the rent as allowed by the Arbitrator for their June 2020 rent, the landlord refused to honour their cheque.

The tenants are seeking clarification on the requirements of the landlord to restore the original fencing. The tenants are also seeking an order that the landlord comply with the previous monetary order and rent reductions made, and request the right to deduct these payments from their rent. The tenants are seeking an additional rent reduction in the amount of \$200.00 per month for the continued harassment from the landlord and loss of their right to peaceful enjoyment and right to use the property as set out in the tenancy agreement.

The landlord does not dispute that they have not provided the tenants with a monetary order in the amount of \$1,450.00 as previously ordered. The landlord testified that they have not denied the tenants their rent reduction, but agree that they did return the June 2020 cheque for other reasons. The landlord testified that the June 2020 cheque was incomplete as it was not dated, and it was returned for that reason.

The landlord disputes the tenants' allegations of harassment, including the tenants' allegations that the landlord had thrown rocks at the tenants' dog. The landlord testified that they were facing pushback from the tenants after requesting that the tenants clean up the property. The landlord testified that they have not entered the tenant's designated area without proper notice.

The landlord testified that they did replace the fence as ordered, and that the replacement fence was compliant with the order. The landlord testified that the replacement fence was different because they retained the right to perform repairs as required. The landlord testified that the original fence was "completely rotted", and that this new fence was put in to replace that one. The landlord testified that they had chosen this type of fence for the replacement as there are hydro, sewer, and gas lines underneath the area, which they needed access to. The landlord testified that the

orange lines were spray painted to mark off areas for weed killer spraying and excavation. The landlord testified that this was done for safety purposes, and to ensure that electricity was supplied for the entire park. The landlord testified that engineers were currently still looking at solutions to stop water from entering the park, which entailed costly and extensive repair work. The landlord argued that the replacement fence was sufficient, and still provided the same form and function as the previous fence.

Analysis

The landlord does not dispute that they have not provided the tenants with a monetary order in the amount of \$1,430.00 as previously ordered. The tenants requested the right to deduct this amount from their monthly rent. I note that the arbitrator did not allow for this deduction in their decision, but made the standard order that the monetary order be served on the landlord, and if the landlord fails to comply with the order, then the tenants may file the order in provincial small claims court in order for the order to be enforced. I find that the arbitrator had already allowed the tenant the monetary order, and the tenant has the option to have the order enforced in small claims court if the landlord fails to comply. I find that this current application is *res judicata* meaning the matter has already been conclusively decided and cannot be decided again. Accordingly, I dismiss this portion of the tenant's application without leave to reapply.

An arbitrator had made a previous order that the landlord restore the tenants' use of the disputed area, and to replace the fence that was removed on or about August 8, 2019. In the clarification, the arbitrator ordered that the landlord comply with this order no later than December 31, 2019. A subsequent order was made to allow the tenants a rent reduction in the amount of \$150.00 until the fence has been "repaired/replaced, as previously ordered in the October 2019 hearing". I have reviewed the testimony as well as the evidentiary materials submitted by both parties for this hearing. I am not satisfied that the replacement fence meets the definition of a repair or replacement as previously ordered. I find the restoration of the fence was found to be necessary and required by the Arbitrator in order for the tenants to use the area as they have done so since the beginning of this tenancy. The order for the landlord to repair or replace this fence was made in conjunction with the order that the landlords restore the use of the disputed area for the tenants. I find the replacement fence violates the rights of the tenants to use this area as ordered by the arbitrator. I am not satisfied that the landlord is in possession of any orders amending this previous order, and accordingly, I order that the landlord comply with the previous orders made on November 6, 2019. I order that the landlord replace the fence with a permanent and secure fencing similar in height, material, and structure as the previous fence, and that allows the tenants to use the designated area as they had before the fence was removed.

I order that this replacement fence must be installed on or before October 31, 2020, and until this is completed the tenants are entitled to the ongoing rent reduction of \$150.00 as previously ordered. I order that in the case of the June 2020 rent cheque, if not yet replaced by the tenant, that the replacement cheque reflect this rent reduction. In the case the tenants have paid more than the reduced rent after May 2020, I order that the tenants be allowed to deduct from future rent the difference owed to them.

The landlords dispute harassing the tenants and entering the designated area without proper notice to the tenants. In light of the disputed testimony, I am not satisfied that the tenants have provided sufficient evidence that the landlord has contravened the *Act* and tenancy agreement in this regard. Accordingly, I dismiss the tenants' application for a further rent reduction and for an order to suspend or set conditions on the landlord's right to enter the site with leave to reapply. I note that the landlord referenced repairs required to the manufactured home park, which may entail access to the fenced off area. I order that the landlord comply with the *Act* as set out below if further access is required, unless ordered by an Arbitrator.

Protection of tenant's right to quiet enjoyment

22 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the manufactured home site subject only to the landlord's right to enter the manufactured home site in accordance with section 23 [landlord's right to enter manufactured home site restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

Landlord's right to enter manufactured home site restricted

23 *A landlord must not enter a manufactured home site that is subject to a tenancy agreement for any purpose unless one of the following applies:*

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;*
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*

(c) the landlord has an order of the director authorizing the entry;

(d) the tenant has abandoned the site;

(e) an emergency exists and the entry is necessary to protect life or property;

(f) the entry is for the purpose of collecting rent or giving or serving a document that under this Act must be given or served.

I allow the tenant to recover the filing fee for this application.

Conclusion

I order that the landlord comply with the previous orders made on November 6, 2019. I order that the landlord replace the fence with a permanent and secure fencing similar in height, material, and structure as the previous fence, and that allows the tenants to use the designated area as they had before the fence was removed. I order that this replacement fence must be installed on or before October 31, 2020, and until this is completed the tenants are entitled to the ongoing rent reduction of \$150.00 as previously ordered. I order that in the case of the June 2020 rent cheque, if not yet replaced by the tenant, that the replacement cheque reflect this rent reduction. In the case the tenants have paid more than the reduced rent after May 2020, I order that the tenants be allowed to deduct from future rent the difference owed to them.

The tenants' application for enforcement of the previous monetary order of \$1,430.00 dismissed without leave to reapply.

I issue a \$100.00 Monetary Order in favour of the tenants for recovery of the filing fee. I allow the tenants to implement the above monetary award by reducing future monthly rent payments until the amount is recovered in full

The remainder of the tenants' application is dismissed with 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 *Manufactured Home Park Tenancy Act*.

Dated: September 23, 2020

Residential Tenancy Branch