Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Manufactured Home Park Tenancy Act (the Act), seeking:

- An order for the Landlord to comply with the *Act*, regulations or tenancy agreement; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant and the Landlord, both of whom provided affirmed testimony. The Landlord acknowledged service of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, and both parties acknowledged receipt of each other's documentary evidence. Neither party raised concerns regarding service. As a result, the hearing proceeded as scheduled and I accepted all of the documentary evidence before me from the parties for review and consideration in this matter. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure). However, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be mailed to them at the addresses provided in the Application.

Issue(s) to be Decided

Is the Tenant entitled to an order for the Landlord to comply with the Act, regulations, or tenancy agreement?

Background and Evidence

There was no dispute between the parties that a tenancy under the Act exists and the tenancy agreement in the documentary evidence before me indicates that the month to month tenancy began on August 28, 2017.

The parties agreed that the maintenance of trees and bushes within the boundaries of a mobile home site (the site) is the responsibility of the tenant renting the site and that the maintenance of trees and bushes on common property is the responsibility of the Landlord. The tenancy agreement and park rules submitted for my review and consideration support this position.

However, the parties disputed whether several trees and bushes which the Tenant states require trimming, are located within the boundaries of the mobile home site rented to the Tenant or on common park property (common property), and therefore who is responsible for their maintenance.

The Tenant stated that the trees in question are located on common property past a green chain-link fence at the back of their site, which abuts a steep treed ravine. The Tenant stated that the branches of the trees and bushes extend over the fence into their site, which affects their use of the site, and that they brush up against the mobile home in the wind, which affects their right to quiet enjoyment. The Tenant sought an order from the Branch compelling the Landlord to trim the trees and bushes in question which they say are clearly located on common property. In support of this position the Tenant pointed to an email dated October 15, 2019, in which the Landlord refers to the area in which the trees and bushes are located as common property.

The Landlord denied that the trees are located on common property. Although the Landlord acknowledged using the words “common property” for the area in question in an email dated October 15, 2019, they stated that this was in error and was simply a poor choice of words, as the trees are located within the boundaries of the site rented to the Tenant under their tenancy agreement. The Landlord stated that all sites that back onto the ravine have site boundaries that extend down the ravine to the property line for the park. In support of this position the Landlord submitted a site map showing the

boundaries of the sites, correspondence from the previous manager (and son of the previous owner) stating that all the site boundaries extend down the ravine, email correspondence between the parties regarding site boundaries, a copy of the application for tenancy, a copy of the park rules and a copy of the tenancy agreement.

The Landlord stated that it is abundantly clear that the area in question is not common property, as it is located behind the Tenant's mobile home and between two other sites (one on either side), and that as a result, this is not an area in which other park residents can or would freely recreate. The Landlord stated that although the ravine is steep and most residents whose sites include the ravine do not use this portion of their sites, a few of the residents have turned these portions of their sites into useable space with things such as terraced gardens. Although the Landlord acknowledged that a green chain-link fence exists in the area in question and that the disputed trees and are located on one side of this fence, they stated that this fence is not the Landlord's property and was not erected to delineate site boundaries. Instead the Landlord stated that it was likely erected by a previous tenant for their own comfort and/or security as the ravine bank is steep.

The Tenant denied ever being advised of the site boundaries before entering into the tenancy agreement, or at any point thereafter, and argued that the first time they saw the site map submitted by the Landlord for my review and consideration was when it was served on them by the Landlord in relation to this hearing. The Tenant stated that she only ever viewed the mobile home site with their realtor when purchasing the home, at which point they simply assumed that the green chain-link fence represented the back boundary for the mobile home site. Both parties agreed that the Tenant moved into the mobile home after it was purchased by them but before the tenancy agreement was signed and that the Landlord never attended the mobile home site prior to the Tenant's purchase of the mobile home to discuss site boundaries. However, the Landlord stated that they had a phone conversation with the Tenant prior to their purchase of the mobile home, in which they outlined the boundaries of the site. The Tenant denied that any such conversation regarding site boundaries occurred.

Analysis

Section 26 (1) of the Act states that a landlord must provide and maintain the manufactured home park in a reasonable state of repair. Section 22 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, freedom from unreasonable disturbance.

Sections H of the application for tenancy submitted by the Landlord for my review, which was signed by the Tenant on August 28, 2017, states that the Tenant has carefully inspected the site and common areas of the park, that they are satisfied with their condition, and that they agree to sign a copy of the sketch plan indicating the approximate measurements of the site and a list of features of the site which belong to and are the responsibility of the Tenant. Under section 2 of the tenancy agreement it states the physical address for the park and the site number rented to the Tenant under the tenancy agreement. It also states that a description indicating the boundaries and area of the site (including a sketch or park plan), and the location of the home within those boundaries, is attached to the tenancy agreement and forms a part of the agreement.

Although the Landlord submitted correspondence from the previous manager (who is also the son of the previous owner) regarding the site boundaries in place when they managed the park prior to the current Landlord taking ownership, I do not find this evidence particularly helpful as the matter before me for determination is not whether the boundaries for the site rented to the Tenant has historically extended down the ravine, but what the boundaries of the site were at the time the tenancy agreement was entered into with the Tenant and whether the Tenant was ever properly advised of these boundaries prior to entering into the tenancy agreement.

An areal photograph of the park was submitted for my review by the Landlord, which the Landlord stated is the copy of the park plan given to the Tenant at the time the tenancy agreement was signed. This photograph contains white markings which the Landlord stated are the exterior limits of the park and the site numbers have been written in by hand. It also contains a handwritten notation that states that 3 feet beside #7 belongs to that owner, 3 feet beside #8 on the side of #9 belongs to the owner on site #8 and that the site boundary extends to the property line in white shown on the photograph.

Although the Landlord stated in the hearing that a copy of this park plan, including the handwritten notations, was given to the Tenant at the time the tenancy agreement was signed, they did not submit any documentary evidence or call any witnesses in support of this testimony and the Tenant denied receiving a copy from the Landlord until the Application had already been filed. I also note that the park plan does not contain a signature for the Tenant as stipulated in the application for tenancy. Further to this, I do not accept the Landlords testimony that they simply misspoke in their email to the Tenant on October 15, 2019, when they referred to the area in question as “common property”. There is a very real and obvious distinction in meaning between common property of a mobile home park and mobile home sites themselves, which I find the

Landlord was abundantly aware of given their documentary evidence and their testimony throughout the hearing with regards to the boundaries of the site and the responsibilities of the parties in relation to trees and shrubs located within the boundaries of mobile home sites and on common property. As a result, I find that the Landlord was fully aware of the meaning of common property when they used it in the email dated October 15, 2019, which leaves me with the inescapable conclusion that at the time this email was authored, the Landlord believed that the area in question was in fact common property.

Given my finding above that the Landlord considered the area in question, which is a treed ravine behind a green chain-link fence located behind the mobile home on the site rented to the Tenant, to be common property as recently as October 15, 2019, I do not accept their argument that this area actually forms a part of the site rented to the Tenant under the tenancy agreement now that the maintenance of this area is in question. Further to this, I question the reliability and veracity of the Landlord's testimony that the Tenant was given a copy of the site plan at the time the tenancy agreement was entered into, as the Tenant denied that this occurred, there is no signature on the site plan as required by the application for tenancy (to show that a copy was in fact received by the Tenant), and no corroborating documentary evidence or witness testimony was provided for my review and consideration in support of the Landlord's testimony on this point.

Based on the above, I am not satisfied that the site rented to the Tenant under the tenancy agreement extends past the green chain-link fence and down the ravine to the property line for the park as asserted by the Landlord, and as a result, I find that the trees and shrubs located there are on common property. Based on the documentary evidence and testimony before me from the parties, such as the park rules and the tenancy agreement, and section 22 of the Act, I am satisfied that the Landlord is responsible for landscaping and maintenance of common property. As the Landlord did not dispute the Tenant's testimony that the branches of the trees and bushes located on the common property set out above, are impacting their use and quiet enjoyment of the site, I therefore accept this as fact.

Given my findings above, and pursuant to sections 26 (1) and 55 (3) of the Act, I therefore order the Landlord to have any branches which extend from trees or bushes located on the common property side of a green chain-link fence at the back of the site, trimmed so that they do not extend into the mobile home site and/or interfere with the Tenants use and enjoyment of the site, no later than 30 days from the date of this

decision. I also order the Landlord to regularly maintain and trim these trees and shrubs so that they do not extend into the Tenant's site in the future.

As the Tenant was successful in their Application, I grant them recovery of the $100.00 filing fee, which they are authorized to deduct from the next months rent payable under the tenancy agreement pursuant to section 72 of the Act, or to otherwise recover this amount from the Landlord.

Conclusion

Pursuant to sections 26 (1) and 55 (3) of the Act, I order the Landlord to, within 30 days of the date of this decision, have the trees and bushes on the common property side of the green chain-link fence at the back of the Tenant's site trimmed so that they do not extend into the Tenant's site.

Pursuant to sections 26 (1) and 55 (3) of the Act, I order the Landlord to regularly maintain the landscaping in this common area so that branches and other foliage does not grow to such an extent that it extends into the Tenant's site, impacting their use and enjoyment of the site.

Pursuant to section 72 of the Act, I authorize the Tenant to deduct $100.00 from the next months rent payable under the tenancy agreement for recovery of the filing fee, or to otherwise recover this amount from the Landlord.

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

Dated: September 2, 2020

Residential Tenancy Branch