# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes OLC, LRE, FFT

Introduction

In this dispute, the tenants seek an order under section 55 of the *Manufactured Home Park Tenancy Act* (the "Act") that the landlord comply with the Act, the *Manufactured Home Park Tenancy Regulation* (the "Regulation"), or the tenancy agreement, and, an order restricting the landlord's right of access to the home sites pursuant to section 63 of the Act. The tenants also seek to recover their filing fees under section 65 of the Act.

The tenants each filed an application for dispute resolution on August 18, 2020 and their applications were joined, pursuant to Rule 2.10 of the *Rules of Procedure,* under the Act. A dispute resolution hearing, at which both applications were heard and considered, was held on Thursday, October 8, 2020. The tenants, their legal advocate, and three agents or employees of the landlord attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses.

No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of these applications.

Issues

1. Are the tenants entitled to an order under section 55 of the Act?

2. Are the tenants entitled to an order under section 63 of the Act?

3. Are the tenants entitled to recovery of the filing fee under section 65 of the Act?

Background and Evidence

There are close to a hundred tenants in this manufactured home park. Two of those tenants brought an application after the landlord, who purchased the park only last year, attempted to have all of the tenants agree to four, new proposed park rules. The proposed new park rules were contained in correspondence (a copy of which was submitted into evidence) that was sent to all of the tenants on July 25, 2020.

One of those rules, which had to do with the requirement that all tenant complaints be made in writing and supported by evidence, was not contested. Three of the proposed rules, however, are contested in this dispute. These three rules read as follows (reproduced as written by the landlord, spelling errors corrected):

> NOT ABIDING BY ALL RULES & REGULATIONS (WILL BE FINED WITHOUT WARNING/NOTICE) AND WILL INCREASE SIGNIFICANTLY AFTER EACH FINE). ($1000 & up)
>
> ANY RESIDENT(S) FOUND/ PROVEN SLANDERING ON SOCIAL MEDIA OR ANY WHERE ELSE (WILL RESULT IN TERMINATION OF TENANCY EFFECTIVE IMMEDIATELY).
>
> YARDS THAT NOT PROPERLY MAINTAINED WILL BE FINED $1000.00+ AND WILL BE CLEANED UP/MOWED BY OUR CONTRACTORS WITHOUT ANY WARNING OR NOTICES (ALL COSTS ASSOCIATED WILL BE FORWARDED TO THAT RESIDENT/TENANTS)

The tenants' advocate argued that these three proposed rules are both arbitrary and punitive. Moreover, the rules would be (if implemented) inconsistent and incompliant with section 32 of the Act. The landlord's attempt to have the tenants agree to these proposed rules is an attempt to amend their tenancy agreements with an unconscionable term. The rule about not posting on social media violates section 32 of the Act, he argued. Moreover, the definition of "slandering" is vague and unenforceable.

Further, the landlord does not, the advocate submitted, have the legal right to unilaterally end a tenancy without having to comply with sections 39 to 42, inclusive, of the Act. Finally, the advocate argued that the third rule (rule number 4) also violates section 32 of the Act because it would be an additional material term of the tenancy agreements and is vague. The meaning of "properly maintained" is ambiguous. Moreover, the imposition of a $1,000 fine is both punitive and unreasonable.

The tenants' advocate submitted that, as per section 30 of the Regulation, park rules must be reasonable. In this case, he argued that none of the three disputed proposed rules are reasonable. They are variously punitive and vague and cause fear in the tenants. Moreover, even if the rules were somehow implemented and permitted, they would not be enforceable under section 30(3) of the Regulation. Most prominently, the rules would not be enforceable because they are not "clear enough that a reasonable tenant can understand how to comply with the rule" (section 30(3)(b)). Further, all three of the proposed rules would change a material term of the tenancy agreements, and thus would be in violation of section 30(3)(d) of the Regulation.

Both parties made submissions and provided testimony about how the landlord could better manage the park, such as having an on-site manager. However, with respect to the tenants, how a landlord wishes to manage or operate a manufactured home park is outside the scope of this decision. It is only when a landlord manages or operates a manufactured home park in such a manner that leads to a breach of their obligations (primarily under sections 21 to 27 of the Act) that an arbitrator may make orders. As such, I will not reproduce either parties' respective positions or evidence on this matter.

In closing, the tenants' advocate perfervidly argued that "these proposed rules look like bullying [. . .] this is quite disturbing." Moreover, he added that "we shouldn't be here [in this hearing] and this is profoundly disgusting."

The landlord (J.) opened his testimony by exclaiming that "we do understand the regulations" concerning manufactured home parks. And, that "we're just trying to run a tight ship" (indirectly referencing the advocate's analogy of the park being that of a "ship that can be turned back on course").

Regarding the proposed new rules, the landlord explained that they were developed to try and fix several issues, primarily one of unattended fires. Furthermore, he remarked that with a hundred tenants, "if you let one get away with" doing something contrary to the interests of the park, then more tenants may end up breaking the rules. He added that it is "hard to be friendly and managerial at the same time."

As to the thousand-dollar fines, he testified that is would be unlikely that they would actually issue such a fine. The large fines and tough rules were intended to "keep people in compliance." And, when you start to "push people" to comply with the rules then people resort to complaining on social media, which then gets out of context and much negativity ensues.

“We are just trying to run the park, and we want it to be well-run park,” the landlord said. People are not seeing it from the landlord’s perspective, he added. He then said that 97% of the tenants are keeping their trailers up to good condition. Finally, in response to my asking about the landlord’s ownership of the park, he explained that they took ownership in December 2019 after the previous landlord owned and operated the park for 27 years.

In closing, the landlord testified that they never meant for the proposed new rules to be a bullying tactic, but rather, they had some serious issues that “were quite worrisome” and therefore believed that the tough new rules (along with the large fines) would “make a stern statement.” Again, it was not the landlord’s intention to bully people but needed something like the proposed rules to make a point, he said.

Regarding the application for an order under section 63 of the Act, while neither party spoke to this issue during the hearing, the concern for the tenants was that of the proposed third rule about the landlord mowing and cleaning and then charging the tenant for costs related thereto. The tenants wanted some security (by way of a section 63 order restricting the landlords’ right to access the manufactured home sites) that the landlord could not go into their property and start mowing, cleaning, etcetera. There is, it should be noted, no evidence presented that the landlord has actually gone into any of the manufactured home sites in contravention of the Act or the Regulation.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

**1. Are the tenants entitled to an order under section 55 of the Act?**

Section 55 of the Act states that

> The director [the arbitrator] may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement.

It is a broad power under the Act but is frequently applied for specific issues that have arisen under a tenancy. In this dispute, I find that the landlord attempted to establish three rules that are not reasonable in the circumstances.

Section 30(1) of the Regulation states as follows:

> (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.

A rule whereby a tenant's breach of another rule or regulation will lead to a fine of $1,000.00 is wholly unreasonable. Moreover, there is no section of either the Act or the Regulation that would permit a landlord to levy fines for breaching the rules. Given that I find that the proposed rule is not reasonable I need not consider whether such a rule would be enforceable (which it would be, if the rule had somehow been implemented).

A rule whereby a tenant posting comments on social media resulting in their tenancy being ended immediately is, I find, unreasonable, and it would not comply with the reasonableness requirement of section 30(1). Moreover, any attempt to implement such a rule would be inconsistent with section 5 of the Act, which states as follows:

> (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
> (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

In this dispute, a rule that permitted a landlord to end a tenancy because a tenant posted something derogatory online would be an attempt to avoid or contract out of the Act. As such, and for the reasons I have explained above, I find that the proposed second rule to be a rule that is not reasonable and cannot be implemented.

That having been said, there is nothing to prevent the landlord from filing an action in Supreme Court under the *Libel and Slander Act,* RSBC 1996, c. 263 for what they may perceive to be defamation. However, given the apparent reasonableness and willingness of the parties in this dispute to have a healthy landlord and tenant relationship, it would be in the tenants' best interests to seek to solve issues in a congenial manner. Trying to fix problems on social media is rarely productive.

Finally, I find that the third rule is, for the same reasons I have explained for the first rule, to be unreasonable. Failure to maintain one's lawn or property leading to a $1,000 fine is unconscionable and has no basis in law. Certainly, a tenant is required by section 26(2) of the Act to "maintain reasonable health, cleanliness and sanitary standards throughout the manufactured home site and in common areas." And a tenant is generally responsible "for routine yard maintenance, which includes cutting grass, and clearing snow" (as per *Residential Tenancy Policy Guideline 1).* Conversely, a landlord is responsible for cutting grass, shovelling snow, etcetera in the common areas of manufactured home parks (*Ibid*.).

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have met the onus of proving their claim for an order under section 55 of the Act. Therefore, I order that the landlord must comply with the Act and the Regulation in any future establishment, change, or repeal of a park rule. Finally, I find that the three disputed proposed rules are not, and would not be, in compliance with the Act and the Regulation, and, that any variation of such rules would be null and void.

Certainly, while the landlord has every legitimate operational and business reason to maintain a well-run park, implementing draconian and unreasonable rules is not the best method for doing so. As for troublesome tenants who breach their obligations under the Act, the Regulations, or their individual tenancy agreements, the landlord will always have the right to file an application for dispute resolution against such a tenant.

**2. Are the tenants entitled to an order under section 63 of the Act?**

Section 63 of the Act states that

> If the director [the arbitrator] is satisfied that a landlord is likely to enter a manufactured home site other than as authorized under section 23 […] the director may suspend or set conditions on the landlord's right to enter the manufactured home site.

In this dispute, notwithstanding that neither party spoke to this, I am not satisfied based on anything I heard otherwise during the hearing, or anything contained within the parties' submissions and documentary evidence that the landlord is likely to enter a manufactured home site unless authorized under section 32 of the Act.

The landlord, who presented as articulate, knowledgeable, and reasonable in the hearing, does not give me any reason (or even suspicion, for that matter) which might lead me to conclude that he is likely to enter a site without proper authority. As such, this aspect of the tenants' applications is dismissed without leave to reapply.

**3. Are the tenants entitled to recovery of the filing fee?**

Section 65(1) of the Act provides that an arbitrator may order payment of a fee under section 52(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. In this case, the applicants were successful in their applications, in respect of the order under section 55 of the Act. Thus, I grant their claims for reimbursement of the $100.00 filing fee.

Pursuant to section 65(2) of the Act, I order and authorize that each tenant may make a one-time deduction of $100.00 from their future monthly rent payment.

Conclusion

I grant the tenants' applications, in part, and the landlord is hereby ordered to comply with sections 30 and 31 of the Regulation.

This decision is made on authority delegated to me under section 9.1(1) of the Act

Dated: October 9, 2020

Residential Tenancy Branch