



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

LRE, AAT, OLC, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for an Order requiring the Landlord to comply with the *Manufactured Home Park Tenancy Act (Act)* and/or the tenancy agreement; for an Order restricting the Landlord's right to enter the rental site; for authority to change the locks; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on, or about, September 22, 2020 the Dispute Resolution Package and evidence the Tenant submitted to the Residential Tenancy Branch in September of 2020 were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these procedures.

On November 18, 2020 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on November 18, 2020. The Landlord stated that this evidence has not been received.

As the Landlord does not acknowledge receiving the evidence the Tenant mailed on November 18, 2020 and the evidence was not served at least two weeks prior to the start of the hearing, as is required by the Residential Tenancy Branch Rules of Procedure, this evidence was not accepted as evidence for these proceedings.

The Landlord stated that on November 04, 2020 the Landlord submitted two letters as evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, on November 04, 2020. The Tenant acknowledged receiving this evidence.

The parties were advised that I was unable to locate the letters submitted in evidence by the Landlord. The Landlord read out the letters during the hearing and the Tenant agreed on the content of the letters. Both parties agreed that it would be reasonable for me to consider those letters at these proceedings, even though I have not physically seen them.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Issue(s) to be Decided:

Is there a need to issue an Order restricting the Landlord's right to enter the site?
Is there a need to grant the Tenant authority to change the locks?
Is there a need to issue an Order requiring the Landlord to comply with the Act or the tenancy agreement?

Background and Evidence:

The Landlord stated that this tenancy began on December 01, 2017. The Tenant stated that it began approximately three years ago.

The Tenant stated that:

- When he moved onto the rental site there was no fence directly behind his manufactured home;
- When he moved onto the rental site there was a fence that runs in a straight line behind sites 4 to 16;
- Many people were storing property on the area behind the fence, even before he moved onto the site;
- Recently a fence was erected behind his manufactured home;
- This fence is approximately 8 or 9 feet behind his manufactured home;
- He is not certain, but he believes his father asked the person building the fence to install a gate in the fence;
- A gate was installed in the fence;
- On September 10, 2020 the Landlord installed a lock on that gate;
- On September 19, 2020 the Landlord removed the lock on the gate;
- The Landlord subsequently erected a second fence immediately behind the fence with a gate;
- He no longer requires an Order requiring the Landlord to change the locks, as the lock on the gate has been removed;

- Now he simply wants an Order requiring the Landlord to allow him access to the area behind the newly erected fence, as he believes it is part of his site; and
- He also wants an Order restricting or setting conditions on the Landlord's right to enter the rental unit, because the Landlord placed a lock on the gate in the fence.

The Landlord stated that:

- There was once a fence that ran in a straight line behind sites 1 to 16;
- There was never a gate in the aforementioned fence;
- This fence is about 10 feet from the rear of each manufactured home site;
- This fence clearly defines end of sites of units 1 to 16;
- Over time the fence between site 1 and 3 have either fallen and/or been removed by third parties;
- When the Tenant moved onto the site the fence directly behind his unit had fallen down, and there were a few pieces of fencing laying on the ground;
- In August of 2020 the Landlord hired a contractor to repair the fence that previously ran directly behind the Tenant's manufactured home;
- She understands that one of the Tenants asked the person building the fence to install a gate in the fence;
- A gate was installed in the fence;
- On September 17, 2020 the Landlord installed a lock on that gate;
- On September 23, 2020 the Landlord removed the lock on the gate;
- The Landlord subsequently erected a second fence immediately behind the fence with a gate;
- The second fence was erected because the Tenant believed the first fence belonged to him; and
- The Landlord wanted the fence to prevent the tenants from entering property belonging to the Landlord, which the Landlord stated is not common property.

The Landlord read out the letter, dated October 25, 2020, which was served to the Tenant as evidence. The author of the letter declared that he previously lived in site 3 and he now lives in site 17; that there was a fence running behind sites 1 to 16, which is now only 80% intact; and the fence between sites 1 and 3 has been knocked down but is partially standing. The Tenant agrees the Landlord has correctly reported the content of the letter.

The Landlord read out the letter, dated November 02, 2020, which was served to the Tenant as evidence. The author of the letter declared that she has lived on site 4 since 1990 and that there used to be a fence running behind sites 1 to 16. The Tenant agrees the Landlord has correctly reported the content of the letter.

Analysis:

On the basis of the undisputed evidence, I find that there was once a relatively straight fence that ran behind sites 1 through 16, which separated the end of those sites from other property belonging to the Landlord.

On the basis of the undisputed evidence, I find that the fence behind sites 4 through 16 still exists. As such, I find that the fence behind sites 4 through 16 clearly defines the rear boundary of those sites.

On the basis of the undisputed evidence, I find that when the Tenant moved onto site 3, the fence between sites 1 and 3 was no longer standing. On the basis of the testimony of the Landlord and the letter dated October 25, 2020, I find that the fence between sites 1 and 3 has been knocked down, although there are still pieces of the fence still laying on the ground.

As there are still pieces of the previous fence laying on the ground, I find that the Tenant knew, or should have known, that this fence previously continued in a straight line behind his site, and that this straight line also defines the rear boundary of sites 1 through 3.

Section 22(c) of the *Act* grants a tenant exclusive possession of the manufactured home site, subject only to the Landlord's right to enter the site pursuant to section 23 of the *Act*. As the Tenant's site ends at the newly erected fence, I find that the Landlord did not breach section 22(c) of the *Act* by erecting the fence.

Section 22(d) of the *Act* grants a tenant the right to use common areas for reasonable and lawful purposes without significant interference. Even if the area behind the Tenant's site is common property, section 22(d) of the *Act* does not, in my view, require a landlord to provide direct access to that common property from each site.

Section 24(1)(a) of the *Act* stipulates that a landlord must not unreasonably restrict access to a manufactured home park by a tenant of a site in that park. As the Tenant is still able to access the site, regardless of the new fence that has been erected, I cannot conclude that the Landlord has breached section 24(1)(a) of the *Act*.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord breached the *Act* by erecting a fence at the rear of the Tenant's site. I therefore decline to grant an Order requiring the Landlord to remove the fence or to provide the Tenant with means to pass through the fence.

In adjudicating this matter, I considered the evidence that many people have been storing property on the area behind the fence. I do not find that people encroaching onto property not exclusively assigned to the tenants as part of their sites establishes that they are entitled to continue to use that area. Rather, I find it reasonable motivation

for the Landlord to erect a fence that clearly separates sites from other property not intended for the exclusive use of the occupants.

Section 23 of the *Act* outlines the circumstances in which the Landlord can enter the Tenant's site. As there is no evidence that Landlord breached section 23 of the *Act*, I dismiss the Tenant's application for an Order restricting or setting conditions on the Landlord's right to enter the site.

I find that the Tenant has failed to establish the merit of the Application for Dispute Resolution has merit and I therefore dismiss the Tenant's application to recover the fee paid to file this Application.

Conclusion:

The Application for Dispute Resolution is dismissed, without 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 *Residential Tenancy Act*.

Dated: November 23, 2020

Residential Tenancy Branch