



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AQUA PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

On October 19, 2020, the Tenant applied for a Dispute Resolution proceeding seeking an Order for the Landlord to Comply pursuant to Section 55 of the *Manufactured Home Park Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 65 of the *Act*.

The Tenant attended the hearing and R.F. attended the hearing as an agent for the Landlord. All parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord with the Notice of Hearing and evidence package by placing it in the Landlord’s mailbox on October 23, 2020. R.F. confirmed that the Landlord received this package and she did not make any submissions with respect to the manner with which this package was served. Based on this undisputed evidence, despite the Notice of Hearing package not being served in accordance with Section 82 of the *Act*, as R.F. acknowledged receiving this package, I am satisfied that the Landlord was served with the Notice of Hearing and evidence package. As such, this evidence was accepted and will be considered when rendering this Decision.

R.F. advised that she served the Tenant the Landlord’s evidence by hand a “few weeks ago”, but she was not sure when exactly this was done. The Tenant confirmed that he received this evidence on January 4, 2021, that he had reviewed it, and that he was prepared to respond to it. Despite this evidence not being served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, as the Tenant was prepared to respond, this evidence was accepted and will be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to an Order for the Landlord to comply?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 31, 2013. Rent was established currently in the amount of \$360.00 per month, and it is due on the first day of each month. A copy of a written tenancy agreement was not submitted as documentary evidence.

The Tenant advised that he came home one day and his neighbour was digging up part of the Tenant's driveway, claiming that he owned it. An altercation ensued between the parties and there were allegations that the Tenant hit the neighbour with his vehicle. The Tenant claimed that the neighbour began constructing a deck which encroached upon and reduced the Tenant's lot size. He stated that the park rules require that all new construction requires permits; however, he did not submit a copy of the park rules as documentary evidence. Furthermore, he referenced bylaws that he believed pertained to the park; however, he was not sure what jurisdiction these bylaws applied to as he simply found them on the internet. He claimed that he was not given access to the park's rules or the Regional District's bylaws either.

R.F. advised that this neighbour received a permit for construction that complied with all Regional District bylaws and park rules. She stated that this person was building a smaller deck, which was approved, but a stop work order was issued because permits for a larger deck were being sought. She submitted a Regional District Committee Report (the "Report") as documentary evidence to demonstrate that the Regional District had approved this construction. She advised that anyone can access the Regional District bylaws at any time.

The Tenant stated that this Report allows for the reduction in his lot size by 20% and he should therefore be entitled to a comparable reduction in rent. As well, he referenced the submitted "Siting & Footings Inspection Notice" that was attached to the Report, and he stated that the status of the project was rejected because a field review from a Structural Engineer was required. He could not explain what this meant or how it impacted the construction project; however, "in his opinion" he believed that this meant that no engineered drawings were submitted.

R.F. stated that the Tenant was not losing 20% of his site. As well, she stated that the Tenant's driveway had been paved in the past and this extended into the neighbour's lot. The neighbour was fine with that in the past; however, this area always belonged to the neighbour and he now needed that portion of his site back for his construction project. She also could not explain what the rejected status in the Siting & Footings Inspection Notice meant.

Analysis

Upon consideration of the evidence before me, I will outline the following relevant Sections of the *Act* that are applicable to this situation. I will provide the following findings and reasons when rendering this Decision.

Section 55 of the *Act* states that an Order that a Landlord or Tenant comply with the *Act* may be granted if it is deemed necessary to give effect to the rights, obligations and prohibitions under this *Act*.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. I also note that the Tenant described in his Application that he was seeking an Order to comply because "The landlady is allowing my neighbor to build an unpermitted permanent structure. In the process expanding footprint onto my property and violating numerous by laws and mobile home park regulations. Not in compliance with Manufactured Home Act."

When reviewing the totality of the evidence before me, I do not find that the Tenant has provided any evidence of the park's rules or the bylaws for the jurisdiction that he lives in, to support his position that this construction project is not in compliance. While he referenced some bylaws that he found online, he has not provided any evidence that these were applicable to the area with which he lives. Furthermore, I find that he has

provided insufficient evidence specifying which “numerous by laws and mobile home park regulations” were violated. Finally, I do not find that he has submitted sufficient evidence that his lot size has been decreased by this construction project.

On the contrary, I have R.F.’s solemnly affirmed testimony that this construction project was permitted, that it complied with all Regional District bylaws and park rules, and that the Tenant’s lot size was not affected. Furthermore, she submitted the Report to support this position. I do not find that there is any evidence before me to indicate that this construction project did not comply with all Regional District bylaws and park rules.

When weighing the evidence presented on a balance of probabilities, I do not find that the Tenant has provided any compelling or persuasive evidence to substantiate that he is entitled to an Order to comply with the *Act*. As a result, I dismiss the Tenant’s claims in this Application.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee.

Conclusion

Based on the above, I dismiss the Tenant’s Application 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 *Manufactured Home Park Tenancy Act*.

Dated: January 20, 2021

Residential Tenancy Branch