Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction
Standards

A matter regarding 0826953 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **RR, LRE, OLC, RP, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Manufactured Home Park Tenancy Act, (the "Act")* and the singular of these words includes the plural.

This hearing dealt with the tenant's application filed pursuant to the Act for:

- An order to reduce rent for repairs/services/facilities agreed upon but not provided pursuant to section 58;
- An order to suspend a landlord's right to enter the rental unit pursuant to section 63;
- An order for the landlord to comply with the Act, Regulations and/or tenancy agreement pursuant to section 55;
- An order for regular repairs pursuant to sections 26 and 55;
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 65.

The tenants and the landlord both attended the hearing. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's evidence however stated it was received late. The landlord testified she had the opportunity to review the tenant's evidence and did not wish to adjourn the hearing to further review it. The landlord stated she was prepared to have the merits of the tenant's application arbitrated upon. The tenant acknowledged receipt of the landlord's evidence package.

At the commencement of the hearing, I explained to the parties how the hearing would proceed and advised them that recording hearing was prohibited. Pursuant to rules 3.6 and 7.4 of the Residential Tenancy Branch rules of Procedure, I advised the parties that in my decision, I would refer to specific

documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Background and Evidence

The tenant gave the following testimony. On July 18, 2020 at approximately 9:30 p.m., the park manager served the tenants with a notice of planned work to be done to the park. The tenant argues that serving at this time is prohibited by the Act and that she should have been served during regular working hours.

The work to be done to the manufactured home park included a widening of the road outside the tenant's manufactured home pad, which reduces the tenant's pad by 190 square feet. After the work was done, the landlord also removed 3 cedar trees from the tenant's lot and left holes unfilled.

The tenants seek compensation at $0.25 per square foot of reduced usage of their lot from the date they received the notice until the end of March 2021, for a combined amount of $398.38. Although not stated in their application, the tenants testify they should be entitled to an ongoing reduction in their rent for the remainder of their tenancy. Further, the tenants seek that the landlord replace the cedars flanking the right and left side of their pad as well as the one between their site and the one beside them. The tenants also seek to have the holes where the cedars were and a hole left from 2018 when the landlord removed the stump of a tree filled in. Although not stated in their Application for Dispute Resolution, the tenants also state that the grade on their lot is irregular, causing the tenant to damage her lawnmower when mowing the lawn.

In their application for dispute resolution, the tenants also seek an order that the landlord comply with the Act. In their description, the tenants state:

> *Ownership of [manufactured home park] has changed since the tenancy was signed. Current owner of [manufactured home park] assumed tenancy. The landlord has threatened the tenant with putative action, but has not communicated with then tenant when the tenant requested*

clarification and additional documentation. The parallels between the new owners of [manufactured home park] and the new owners [another manufactured home park] are very similar, and the tenant believes that the ruling of [a previous arbitrator] be applicable in this instance. (identifiable names have been removed for privacy)

While it was not specifically stated in the tenant's application, in testimony, the tenants described park rules being issued by the landlord are in conflict with the *Manufactured Home Park Tenancy Act.*

Lastly, the tenants seek an order that the landlord erect a privacy fence between their pad and the parking lot. The tenants argue that there is a clear view into their home from the lot and that the lot is used by other tenants in the park to repair their vehicles and sell them. By failing to block the view of their home from the people parking in the parking lot, the landlord is breaching section 22 of the Act in not providing reasonable privacy.

The landlord gave the following testimony. The widening of the roads was done to provide safety for the park residents. It was done together with other safety measures such as road bumps being installed to slow traffic. The landlord submits that the tenant was the one who requested the widening of the street for safety.

The landlord argues that the tenant's pad was not infringed upon with the street widening. The street widening was done to the boundary of the tenant's unit as marked by the "pins" that demark the end of the tenant's pad site and the common property of the road. The tenant did not obtain a surveyor's report to show where her actual property ends as opposed to the property she believed she has had the use of before the widening. The landlord submits that the landlord is within their rights to widen the streets on the common property and that the tenant should not be compensated since the tenant's pad was not encroached upon. The tenancy agreement does not list the square footage of the lot being rented and the "pins" that depict the boundaries of the lots indicate the paved areas were outside the tenant's lot. Further, there is no loss of service or facility because the tenant has never done anything with the front part of the driveway that the landlord paved over in widening the street.

With respect to the fence issue, the landlord submits that the parking lot is where it always has been since before the tenant took possession of the pad site. The

parking area is 21 feet away from the tenant's pad. The landlord paved over the existing gravel site where people have always parked their cars, nothing more. The landlord could have made the parking area even larger, coming even closer to the tenant's site but didn't. There wasn't a fence there before the paving and the landlord shouldn't be expected to now install a privacy fence since the sightlines have not changed.

The landlord acknowledges one cedar tree between the tenant's pad and the neighbouring pad was taken down and she will replace it. The other cedar the tenant wants replaced was not located on the tenant's property and the landlord argues she is not required to replace it. The last cedar was taken out because it was dead and the landlord submits she is not responsible for replacing it because the tenant was responsible for doing so. The landlord agreed to fill any holes left on the tenant's pad site where the trees or stumps were removed.

The landlord testified that so much of what the tenant is now bringing up, she is hearing for the first time. In response to the tenant's application that she comply with the Act, regulations or tenancy agreement, the landlord submits that the park rules are compliant with the Act.

Lastly, the landlord argues she has the right to post notices on the tenant's door at all hours since the tenant is renting the pad and does not own the property.

Analysis

- Rent reduction/compensation

Although the tenant's application appears to seek a reduction in rent, the tenant gave testimony and supplied a monetary order worksheet supporting a monetary order for $464.32. This is calculated as $398.38, representing a loss of $0.25 per square foot multiplied by 190 square feet from July 18, 2020 to March 31, 2021 and $65.94 for 3 cedar trees requiring replacement.

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 60 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

With respect to the tenant's claim for $0.25 per square foot for 190 feet of lot lost to the widening of the road, I find the tenant has not provided sufficient evidence to support the existence of the damage or loss (point 1 of the 4-point test). While it is possible that the tenant had use of a larger lot before the street widening, the tenant did not provide sufficient evidence to satisfy me the actual size of the lot being rented in accordance with the tenancy agreement. I find the landlord correct in pointing out that the individual lots are marked with "pins" by surveyors and I do not find the tenant provided sufficient verifiable evidence to show where her lot ends and where the common property of the park begins according to the "pins".

Second, I find the tenant has not provided any evidence or scale upon which I could base a decision to award her $0.25 per lost square foot of lot size. The tenant acknowledged during the hearing that she had no basis for the compensation sought, she simply felt that it was a fair amount of compensation. I find the tenant has failed to provide sufficient evidence to prove the value of the damage or loss (point 3 of the 4-point test). For these two reasons, the tenant's claim for a retroactive rent reduction from July 18, 2020 to March 31, 2021 is dismissed without leave to reapply.

The landlord acknowledges a cedar tree located between the tenant's lot and the neighbouring lot was removed and agreed to replace it**. I order that the landlord replace that single cedar tree between the tenant's pad and the neighbouring pad with a tree equivalent to the one from Home Depot depicted in the tenant's evidence at the landlord's own cost.** Regarding the other two trees: it is the applicant's burden to prove on a balance of probabilities their version of events is the more probable. I find that the landlord's version that the second tree in question on the tenant's property died due to a lack of care to

be a reasonable cause for removing it. The landlord is not responsible for replacing it. I am likewise satisfied the third tree was not located on the tenant's property and the landlord is not responsible for replacing it either. I decline to order that the landlord replace the two other trees as the tenant seeks.

The landlord has agreed to fill in any holes left by the removal of trees or stumps. **I order that the landlord fill in the holes where trees and stumps were removed as necessary.** The landlord is not responsible for making the grade of the tenant's pad more uniform so that the tenant can mow her lawn more easily.

- Restrict landlord's right to enter

The tenant's application seeking an order that the landlord's right to enter the site be suspended was predicated on the single event of the landlord posting a notice regarding the road widening at 9:30 p.m. on July 18, 2020. I find that the landlord's entry onto the site was a single incident, not a series of transgressions or unreasonable entries. The tenant has not satisfied me the landlord's right to enter the manufactured home site should be restricted in any way other than as provided by section 23 of the Act. This portion of the tenant's application is dismissed without leave to reapply.

- Landlord to comply with the Act, regulations or tenancy agreement

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure states that the claim is limited to what is stated in the application. The tenant's application did not point out any specific term of the tenancy agreement, section of the Act or regulation the landlord was not complying with. During the hearing, the tenant spoke about the park rules not being in compliance with the Act however none of this was stated in the application. I found this portion of the tenant's claim to be both convoluted and confusing. It is not the role of the arbitrator to reconcile an applicant's application to look for potential violations; only to determine whether the applicant has provided sufficient, clear evidence to establish their claim. I dismiss this portion of the tenant's application without leave to reapply.

- Repairs to be made to the site

Section 32 of the Act states:
A landlord must provide and maintain residential property in a state of decoration and repair that

a) complies with the health, safety and housing standards required by law, and

b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The tenant seeks an order for the landlord to install a fence between her lot and parking lot some 21 feet away. The landlord testified that a gravel lot had always been there and that she simply paved it over and had lines drawn in. In this case, I do not find the landlord to be in breach of section 32 of the Act, since the pad being rented complies with the health, safety and housing standards required by law and is suitable for occupation by a tenant. Further, the landlord is under no obligation to enhance the tenant's pad by providing the fence as sought since I find the parking lot was already there before being paved over. This portion of the tenant's application is dismissed without leave to reapply.

As the majority of the tenant's application was not successful, the tenant is not entitled to recovery of the $100.00 filing fee for the cost of this application.

Conclusion

I order that the landlord replace that single cedar tree between the tenant's pad and the neighbouring pad with a tree equivalent to the one from Home Depot depicted in the tenant's evidence at the landlord's own cost.

I order that the landlord fill in the holes where trees and stumps were removed as necessary.

The remainder of the tenant's application 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 *Manufactured Home Park Tenancy Act*.

Dated: April 26, 2021

Residential Tenancy Branch