



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC MNDCT FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the "Act") for:

- an Order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 55;
- a Monetary Order for compensation pursuant to Section 60; and
- to recover the filing fee from the landlords pursuant to Section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenants were represented by an advocate. The landlord JN confirmed they represented all named respondents.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The landlord testified that they received the tenant's materials. Based on the testimony, I find the landlord duly served with the tenant's materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the landlords be ordered to comply with the Act, regulations or tenancy agreement?

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the filing fee from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

There have been several other hearings pertaining to this tenancy under the file numbers on the first page of this decision. The parties agree that this tenancy began on June 15, 2018 and the current monthly rent is \$672.08 payable on the first of each month.

The tenants submit that since December 2020 the landlords and their agents have trespassed on their property. The tenants submit that the landlords and their agents have cut across the back yard of the rental unit, held meetings on the pad site, carried construction materials through the yard, and have freely used the utilities such as the water on the tenants' unit.

The tenants submitted numerous photographs which they say show unauthorized individuals on their property. The tenants testified that as a result of the constant ingress on their property their enjoyment of their rental unit has diminished and feel uneasy in their own home. The tenants seek a monetary award in the amount of \$260.16, calculated as the equivalent of the monthly rent for the instances when ingress occurred.

The landlord disputes the tenant's claim in its entirety. The landlord states that neither they nor their agents have trespassed on the tenant's property. The landlord gave testimony regarding the layout of the tenants' pad stating that the landlords own a neighboring pad and both units are accessed by a common walkway. The landlord testified that the photographs submitted by the tenants show the landlord's agents on the common property of the park, the neighbouring unit belonging to the landlord and any individuals seen on the tenants' property are unknown figures who have no relation to the landlords.

The tenants referenced the earlier decisions of this Branch. The tenants quoted the decision of the arbitrator in the decision dated February 3, 2021 which provides:

Finally, with respect to the Tenants' claim of \$238.48 for the disturbance and loss over 11 days because J.N. went onto their site without their consent, as J.N. acknowledged that he did not provide the Tenants with the proper written notice

required to enter the site pursuant to Section 23 of the Act, I grant the Tenants a monetary award in the amount of \$238.48 to satisfy this claim

The tenants submit that while the previous decision relates to issues unrelated to the matter at hand, they believe the previous ingress of the landlords demonstrates a pattern of continued disregard for the tenants' right to exclusive use of the rental unit.

Analysis

Pursuant to Rule of Procedure 6.6 the applicant bears the onus to prove their case on a balance of probabilities.

Based on the evidence including the testimony of the parties and documentary materials I am not satisfied that the tenants have met their evidentiary burden to demonstrate that there has been a breach of the Act, regulations or tenancy agreement by the landlords requiring an order of compliance or giving rise to a monetary award.

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

While the tenants did not submit a tenancy agreement into evidence, I find it reasonable to accept that the terms of pad rental would give access to some areas adjoining the rental unit. I find that many of the photographs submitted by the tenants in support of their claim that the landlord and their agents have trespassed simply show individuals outside of a manufactured home. These photographs appear to be taken from within a manufactured home. Most of the photographs show individuals at a reasonable distance from the manufactured home. I do not find that these photographs and the disputed testimony of the tenants to be sufficient to conclude that the landlords or their agents have trespassed onto the tenants' unit.

The tenants have submitted some photographs which they claim show workers congregating outside of their manufactured home. I note that these photographs are clearly taken from outside of the manufactured home, facing towards the structure. If

workers were standing directly outside of the tenant's manufactured home it would be reasonable to expect that the tenants would simply take a photograph from indoors showing the proximity of workers to their windows. Instead, these photographs are taken from outside of the building. The landlord testified that these photographs show workers outside of the landlord's unit which I find to be a more reasonable explanation of what is shown.

I do not find the tenant's testimony regarding the landlords and their agents to be sufficiently supported in the evidence to meet their evidentiary burden. I find the findings of previous arbitrators for matters unrelated to this present hearing to be irrelevant. I do not find that a previous finding of a breach on the part of the landlords is sufficient to demonstrate that there are other breaches.

I find that the tenants have not met their evidentiary burden on a balance of probabilities to establish any portion of their claim and consequently dismiss their application in its entirety without leave to reapply.

Conclusion

The tenants' application is dismissed in its entirety 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 13, 2021

Residential Tenancy Branch