



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ZAM ENTERPRISES LTD., ZAM ENTERPRISES LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, RR, PSF, FF

Introduction

This hearing convened on February 16, 2021, in response to the tenant's application for dispute resolution under the Manufactured Home Park Tenancy Act (Act) for:

- an order requiring the landlord to comply with the Act, regulation, or tenancy agreement;
- a reduction in monthly rent;
- an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act; and
- recovery of the filing fee.

The original hearing was adjourned, after 61 minutes, and was set to reconvene to hear from the parties' witnesses, as the principal parties completed their evidence in support of and response to the tenant's application. An Interim Decision, dated February 17, 2021, was entered in this matter, and that Interim Decision is incorporated by reference and should be read in conjunction with this Decision.

The tenant, his advocate, the landlord's agent (landlord) and the parties' respective witnesses attended this reconvened hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to orders against the landlord, to a reduction in monthly rent, and to recover the cost of the filing fee?

Background and Evidence

The parties agreed that the tenant has been a tenant since October 1, 2001 and that current monthly pad rent is \$344.40. Filed in evidence was the original written tenancy agreement and Park Rules.

In support of the application, the tenant and his advocate submitted evidence for the following issues:

An order requiring the landlord to comply with the Act, regulations, or tenancy agreement –

The tenant submitted that they received a copy of the written tenancy agreement in the landlord's evidence.

As to the other request, the tenant submitted that he requested the landlord to allow him to erect a fence around his lot. The request for the proposed fence met the requirements under the Park Rules for fencing but the landlord has not responded. The tenant submitted that the Park Rules should be enforced equally, and they are not.

Landlord's response –

The landlord's agent, the park manager, submitted that the request from the tenant was a major issue, as there is already a fence in place that has been there since at least 2015.

The fence in question is the fence from the adjoining lot, which connects from that lot to the tenant's home. The landlord submitted that the tenant has always been given access to his lot through the adjoining lot, by way of a gate.

The landlord submitted that there have been a lot of issues with this tenant and his neighbour, the landlord's witness, BL, and that the tenant's request was not genuine.

In rebuttal, the advocate submitted the agent has allowed other fences in the Park to be erected and that BL erected the fence while the tenant was away.

The advocate submitted that the gate to which the landlord referred has been wired shut and that the tenant does not have access to the side of his home.

The advocate submitted that the neighbour has encroached on the tenant's lot with the fence, and that he is being deprived of 3 feet of his lot.

Reduction in monthly rent –

The tenant and advocate submitted that the tenant has lost a portion of his lot, due to the fence encroaching onto his lot. The tenant submitted that he cannot obtain insurance because of a lack of access. The tenant submitted also that he has been instructed to stay away from the side of his home that borders BL's lot.

The tenant submitted he should be compensated \$100 for the loss of a portion of his lot.

Also filed into evidence by the tenant were black and white copies of photos from the exterior of the tenant's home. Filed also was a letter to the tenant from the landlord, dated October 5, 2020, instructing the tenant that he was not allowed on the side of his home along BL's yard and that if he wants to maintain any part of the side of his home, he would have to contact the landlord. Also filed was a request to the landlord for permission for the tenant to erect a fence and a written response to the landlord's letter of October 5, 2020.

Landlord's response –

The landlord submitted that they sent a letter to the tenant that if he needed access to his lot, he needed to get permission and to contact BL for a time. The landlord said that there had been too much conflict caused by the tenant, but denied that his access was impeded.

The landlord said that when she first met with the tenant, he told her he cannot get insurance due to electrical issues. The landlord submitted that the tenant is not entitled to be compensated for something for which he has never been deprived.

The advocate said that the tenant is trying to follow the Park rules and that a good relationship with a neighbour is not necessary.

An order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act –

The tenant submitted he has had part of his site taken by BL's fence that encroaches on his lot, depriving him of his side door. A written request was made to the landlord, but was not answered.

In response to my inquiry, the tenant said that he has never had steps at his side door.

Tenant's Witness' testimony –

JP said they have lived in the Park since 2011 and has witnessed the goings-on between the tenant and BL. JP said they have seen BL go through the tenant's storage bin and stand on her deck trying to look into the tenant's window. This confirms that the tenant needs a fence, as BL's deck is 11 feet away from the tenant's home.

GB said they have lived in the Park for 14 years and that he has a long-standing dispute with the landlord for a fence. GB said the landlord ripped up his fence.

Landlord's witness' testimony –

BL said that they have lived in the Park since 2004 and over the years, has maintained the yard. BL said they and the tenant have had a good relationship over the years and that they have looked after the tenant's home for several years while he lived away for 4-6 years. At one time, they had the tenant's keys and he left his back door open.

BL said they did not know that her fence was on the tenant's lot. BL said their fence was up to the tenant's trailer. BL said that there was always a gate for the tenant's use and the tenant said that said that was not a problem.

BL said that a fence by the tenant would impact the long standing lilac bushes on the property.

Filed into evidence by the landlord were photos of the lilac bushes, the fence going to the tenant's home, other exterior photographs, some black and white, and warning letters to the tenant about his behaviour.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In this application, the claiming party, the tenant here, has the burden of proof to substantiate their claim on a balance of probabilities.

I have reviewed the tenant's evidence, which included black and white photographs of the exterior of his home. There was only one photograph which I surmised showed the fence between the homes; however, even that was uncertain. The photograph was taken from a distance, was unclear and most of the fencing was shown in shade, which the black and white photo made it impossible to see in the shaded area. I would have expected more and clear photographs showing the fence, which was central to the tenant's application.

Additionally, I find the tenant submitted insufficient evidence to support that he has been denied access to his side yard, as this was not clearly shown in the photographs or other evidence.

Due to this insufficient evidence, I find the tenant's claim for an order requesting approval to erect a fence fails and as a result, I dismiss this portion of the tenant's application.

I, however, find it necessary to and I therefore **order** the landlord to respond to the tenant's written request of October 22, 2020, to erect a fence in accordance with the Park rules, **within 14 days of this Decision**.

In looking at the landlord's letter of October 5, 2020, to the tenant, I caution the landlord that this letter was unreasonable and violates the tenant's use and access to their side yard. A landlord may not tell a tenant they cannot go to one side of their home or use the lot included with their tenancy agreement. The landlord's instruction to the tenant to obtain the landlord's permission to maintain his own lot is unreasonable and unenforceable.

After reviewing the relevant evidence, I find it necessary to issue orders against the landlord.

The undisputed evidence is that the fence on BL's lot extends and touches the tenant's home, encroaching on his lot. I therefore **order** the landlord to do one of the following:

- 1) Install an unlocked gate to the portion of the fence extending onto the tenant's lot allowing unfettered access no later than within one month of this Decision, or
- 2) Remove all portions of the fence that extends beyond the tenant's site line, as it interferes with access to the tenant's lot, no later than within one month of this Decision.

The landlord is informed that failure to comply with these orders can result in a Compliance and Enforcement Unit investigation, which could levy an administrative penalty and cause an application from the tenant for monetary compensation.

As to the tenant's request for monetary compensation, I find the tenant has submitted insufficient evidence to support his claim of \$100. The tenant failed to provide a breakdown of his claim or that he took all reasonable steps to minimize this claim, due to the evidence I heard that the fence in question has been standing for several years.

The tenant's claim for \$100 is dismissed, without leave to reapply.

As I have issued orders against the landlord, I find the tenant is entitled to recovery of his filing fee of \$100.

I authorize the tenant to deduct \$100 from a future monthly rent payment. The tenant is encouraged to inform the landlord of when this deduction is being made, in order to prevent the landlord from issuing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Conclusion

The tenant's application for an order allowing the tenant to erect a fence is dismissed.

The landlord has been ordered to respond to the tenant's written request for permission to erect a fence.

The landlord has been given orders regarding the fence between the tenant's lot and the adjoining lot.

The tenant's monetary claim is dismissed.

The filing fee is granted by way of a one-time rent reduction as noted above.

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: June 1, 2021

Residential Tenancy Branch