Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 419710 B.C. LTD dba Silver Ridge Estate and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT FFT OLC

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 60;
- authorization to recover the filing fee for this application, pursuant to section 65; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 55.

NS ("landlord") testified as agent on behalf of the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenants' applications for dispute resolution hearing package ("Application") by way of registered mail. In accordance with sections 82 and 83 of the *Act*, I find that the landlord deemed served with the tenants' application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 81 of the *Act*.

At the outset of the hearing, the tenants confirmed that this tenancy had ended on July 1, 2021. As the tenancy has ended, the tenants' application for the landlord to comply with the *Act* and tenancy agreement is cancelled.

Preliminary Issue: Digital Evidence

The landlord testified that although they were served with the tenants' evidence, they were unable to view the videos that the landlords had submitted. The landlord requested that these videos be excluded.

Rule 3.10.5 of the RTB Rules of Procedure states the following about access to digital evidence.

3.10.5 Confirmation of access to digital evidence

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence. Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence.

If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

As the landlord was unable to view the digital evidence submitted by the tenants, I exercise my discretion to exclude this evidence. With the exception of the excluded videos, all parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed with the hearing.

Issues

Are the tenants entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the cost of the filing fee from the landlord for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenants had been living in the manufactured home park on a month-to-month tenancy since April 2, 2008. The monthly pad rental was set at $500.69, payable on the

first of the month. The tenants moved out on July 1, 2021 after filing this application on April 5, 2021.

The tenants are seeking a 100% rent reduction of their rent for the period beginning July 2018, plus recovery of the filing fee. The tenants provided a break down of the monetary claim in their evidence as follows to reflect the change in pad rental since July 2018.

July 2018 - September 2018: 3x $ 457.82
October 2018 - September 2019: 12x $ 476.12
October 2019 - September 2020: 12x $ 488.01
October 2020 - September 2021: 12x $ 500.69
Filing Fee: 1x $ 100.00

Total: $ 19,051.30

The tenants are seeking the return of the rent for the above period due to the harassment that has taken place during this tenancy by the landlord. The tenants provided a detailed summary of the issues behind this application in their evidentiary materials, and as noted above, although I have turned my mind to all the respective evidence and testimony before me, not every detail has been reproduced here. The following is a summary of the main reasons for why the tenants feel that they should be reimbursed their rent for the above period.

The tenants testified that they feel targeted by the landlord and their agents in an attempt to bully them out of the park. The tenants testified that they eventually could not tolerate any more harassment, and subsequently sold their manufactured home, and moved out of the park. The tenants testified that the harassment started in 2018, which included the issuance of two, unjustified notices to end tenancy, which were cancelled after the notices were disputed; unfair and prejudicial treatment by the landlord as evidenced by different procedures for obtaining approval by each tenant to prune trees; defamation of the tenants, both verbally and in writing; the issuance of a three month ban from the clubhouse without a valid reason or reimbursement, which the tenants felt was done out of retaliation; intimidation using motor vehicles by the landlord and their agents; verbal harassment; making false accusations; threats to end the tenancy; and lastly attempting to jeopardize the sale of the home by increasing the pad rental amount and imposing an age restriction.

The tenants highlighted in their evidence 6 “cases” as follows:

1) Case 1: Unjustified Notice to End Tenancy #1 (July 2018). The tenants described the situation that resulted in the tenants being served a 1 Month Notice to End Tenancy for a material breach of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The 1 Month Notice pertained to the allegation that the tenants had multiple unauthorize pets, and that the tenants failed to correct the breach after being warned about the breach. Although the tenants do not dispute that they had dogs that they were caring for, the tenants state they were simply pet sitting, and the landlord was inconsistent and vague in enforcing the rules despite the “no pets agreement” signed by the tenants. The tenants state that they were served the 1 Month Notice with no verification that they had corrected the breach. The 1 Month Notice was cancelled by the Arbitrator after they made a finding “that the Landlord did not establish that the dogs were still present in the home prior to issuing the 1 Month Notice”.

2) Case 2: Clubhouse Ban (December 2018). The tenants described a ban that was imposed by the landlord in December 2018 for three months from December 11, 2018 to March 11, 2019 for allegedly contravening a rule that the tenants not use a door marked “private”. The landlord wrote a letter informing the tenants that the video surveillance had captured the tenant AV use the door, and therefore the tenant was issued a three month ban on any use of the clubhouse. The tenant attempted to dispute the ban directly with the landlord, and was informed that if the tenant does not abide by the rules a notice to end tenancy would be given. The tenants state that the fee for using the clubhouse was included in the monthly pad rental, and the landlord did not reimburse them any portion of the pad rental despite the ban. The tenants included a copy of the previous decision involving previous tenant BL and the landlords, where the Arbitrator found the landlord to be acting “in a retaliatory manner by banning the tenant from the common area, the clubhouse, for he final 9 months of the tenancy”…”

3) Case 3: Unjustified Notice to End Tenancy #2 (December 2019). A hearing was held on February 28, 2020 to deal with a Notice to End Tenancy that was served to the tenants on December 13, 2019. The landlord served the tenants the 1 Month Notice after an incident that took place on December 11, 2019 for allegedly threatening the landlord. The Arbitrator cancelled the 1 Month Notice as they were “not satisfied that this comment was a credible threat”, and that the landlord had established the grounds to end the tenancy for the reasons provided on the 1 Month Notice. The tenants allege that the landlords use the Notices to

End Tenancy as a retaliatory tactic against tenants, as supported by the decisions submitted in for this application.

4) Case 4: Verbal Abuse (August 2020) by the landlord. The tenants allege that NS, on August 2, 2020, lowered the window of the vehicle NS was in in order to shout profanities in Punjabi. The tenants submit that the translation of the threat was a serious one which referred to rape of the tenants' sister. The tenants testified that this was caught on security camera and reported to the police, which footage was excluded as the landlord claimed was not viewable by them.

5) Case 5: Public Defamation (August 2020): The tenants submit that the landlord had made false accusations of the tenants as highlighted in an "official notice" that was sent to the residents of the manufactured home park. In addition to the notice, the tenants also received a warning letter dated August 24, 2020 stating that the tenants have been harassing other tenants, defaming the landlords' reputation, making false statements to other parties, and claiming to be working for the landlord. The tenants feel that this was another attempt to intimidate them and a sign that there is a disconnect between the owners of the park.

6) Case 6: Intimidation with Truck on December 8, 2020 by NS. The tenants' son states that he had reviewed the footage from the cameras in his father's car which shows his father driving through the park on his way to town when he was harassed by NS. The tenants submit that the intimidation and harassment was escalated by NS from blocking the road to attempts to intimidate AV by approaching AV's vehicle at high speed and abruptly braking. When confronted by the tenants' son, NS denies being at the park on that day. The tenants' son submitted a map of where this took place, as well as photos to show that the person and vehicle depicted matched the image of NS and his truck. The tenants' soon states that the incident was reported to the police due to the serious and threatening nature of the incident.

The tenants testified that many tenants in the manufactured home park have been bullied into ending their tenancies. BL testified in the hearing that she was a former tenant, and an applicant and advocate in previous disputes involving the same landlord. The tenants provided a copy of the decision where the BL was awarded a one hundred percent rent reduction by an Arbitrator for an eleven month period, plus reimbursement of holdback and legal fees. The tenants point out that the landlord was unsuccessful in every arbitration hearing that was held, and that was followed by harassment, retaliation, and threats that worsened over time until the tenants would sell their homes

and move out. BL testified that of the fourty-four units in the park have sold their units since 2016, nineteen of which had re-sold again. BL testified that her home was re-sold six months later because of the landlord. BL testified that it felt like there was a blacklist. BL testified that she had witnessed NS drive by in order to intimidate the tenants.

The landlord denies the allegations of harassment made by the tenants. NS testified in the hearing that AV was a former employee of his father, performing maintenance and acting as a caretaker at the park. NS testified that AV's employment was terminated after AV had made fraudulent claims for hours worked, and that AV was extremely upset. NS testified that the accusations made in this application were false, and that the tenants were harassing the landlord and him.

NS does not dispute that a ban was imposed on the tenants from the clubhouse after the tenants were discovered to be tampering with the camera in order to hide or conceal things and break the rules. NS testified that the tenants were aware that they were not to open the door marked "private", but continued to do so anyway.

BS testified in the hearing that AV was a disgruntled former employee who was fixated on retaliation. The tenants responded in the hearing that the landlord was the party who was upset about the former dispute between the parties, which fueled the ongoing harassment.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenants must satisfy each component of the following test for loss established by **Section 7** of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

> ***7*** *(1) 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.*
>
> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,

2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement

3. Verification of the actual amount required to compensate for the claimed loss.

4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Furthermore, section 58(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

In assessing the tenants' claims, as noted above, the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. It is not enough to repeat wording supplied by another tenant, sign an application for dispute resolution, and obtain the same outcome as that provided by an Arbitrator on an earlier application for dispute resolution. Affixing a Residential Tenancy Branch decision number and requesting the same outcome is not sufficient to demonstrate entitlement to a monetary award or a reduction in monthly rent. Although attaching a copy of that decision to an application for dispute resolution is preferable to simply citing the decision number, this too does not demonstrate entitlement to a monetary award or a reduction in monthly rent. Each circumstance needs to be considered on its own merits and on the basis of the evidence supplied by the parties to a dispute.

In this case, I find that the tenants referenced a case where a previous tenant in the same manufactured home park was awarded a one hundred percent rent reduction for loss of quiet enjoyment due to the landlord's actions. Similarly, the tenants in this application for dispute resolution filed a claim for reimbursement of one hundred percent of their rent for a specific period. Although there are some similarities between the two cases, including the fact that both tenants resided in the same manufactured home park, and referenced disputes with the same landlords over similar issues such as the receipt of notices to end tenancy, and bans on the use of facilities, as stated above,

each application is decided on its own merits, which must be supported by the party making those claims.

I have reviewed and considered all relevant evidence presented by the parties. On preponderance of all evidence and balance of probabilities I find as follows.

Section 21 Terminating or restricting services or facilities, states as follows,

> **21** (1)A landlord must not terminate or restrict a service or facility if
>
> (a)the service or facility is essential to the tenant's use of the manufactured home site as a site for a manufactured home, or
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> (b)providing the service or facility is a material term of the tenancy agreement.
>
> (2)A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
>
> (a)gives 30 days' written notice, in the approved form, of the termination or restriction, and
>
> (b)reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I find that for the purposes of this matter pursuant to Section 21(2)(b) and 58 that recreation facilities such as the clubhouse is considered a qualifying **service or facility** stipulated in the **Definitions** of the *Act*.

I find the evidence is undisputed that the landlord had imposed a three month ban on the tenants' access and use of the clubhouse facility. In light of the evidence and testimony before me, I find the imposition of the three month ban to be arbitrary considering the fact that the tenants were not provided a fair and impartial process for disputing the claims and the ban imposed by the landlord. Furthermore, I find that the tenants' pad rental included the use of the banned facility, and the tenants were never provided reimbursement equivalent to the value of the facility despite the fact that the *Act* clearly states that on termination of a service or facility the appropriate remedial rent reduction amount should be "equivalent" to *the reduction in the value of the tenancy agreement.* I find that the requisite calculation prescribed in 21(2)(b) is one predicated on the question of, "what is the reduction in the *value* of the tenancy agreement resulting from the absence of the facility"? Or, "by what amount is the *value* of the tenancy agreement (rent) reduced in absence of facility"?

Based on the evidence and testimony before me, I find that the clubhouse was a facility that was important to the tenants, both as an organizer of functions and as a guest or attendee in the community within manufactured home park. I find that withdrawal of this facility, or even the threat of further bans from the use of this facility, impacted the tenants significantly. The tenants felt that the ban, along with the other actions of the landlord, was an attempt by the landlord to harass or intimidate the tenants. In light of the evidence before me, even though the landlord was unsuccessful in their attempts to end the tenancy on the grounds of the 1 Month Notices served on the tenants, I am not satisfied that the tenants had provided sufficient evidence to support the allegations of harassment or retaliation referenced in this application.

In light of the conflicting testimony between both parties, I find that the landlord did establish that there was a former dispute between the parties related to the tenant AV's former relationship with the landlord as an employee. It is undisputed that the tenant was terminated by the landlord as an employee, and whether the landlord had proper grounds to support this termination or not is a separate dispute that does not fall within the jurisdiction of the RTB. What the evidence does support, however, is the fact that there is interpersonal conflict between the parties, which involved allegations by the tenants that involve potential charges under the criminal code such as harassment and uttering threats. I am not satisfied that the tenants had sufficiently supported that the landlord has been charged or convicted of any such offences, nor am I satisfied that the tenants have established that the landlord's actions were intentional and malicious attempts to harass or intimidate the tenants.

What I find that the tenants have established, is that they had suffered a loss in the enjoyment of an included facility, and that this loss was not only significant to them, but it was a facility that was arbitrarily restricted and denied by the landlord. I recognize that the tenants were denied the facility for three months, and that the value of this loss is difficult to measure considering the role the clubhouse played in the tenants' lives. I find that this loss, and the threat of further bans, played a role in the tenants' right to quiet enjoyment of the manufactured home park and its facilities.

Although I find the motivations of the landlord to be unproven in this specific dispute involving the tenants and the landlord, I find that the landlord's imposition of the ban to be highhanded and unfair. I find that the tenants were denied the use of the clubhouse without a fair opportunity to dispute the allegations that the tenants were "snooping around and causing a disturbance to the residents" before the imposition of the ban, and instead were told that "management could have issued you a permanent ban for life".

Not only did the landlord withdraw a facility in contravention of section 21(2) of the *Act,* I find the manner by which the landlord decided to do this to be a significant breach of the tenants' rights under section 22 of the *Act* which states:

Protection of tenant's right to quiet enjoyment

Protection of tenant's right to quiet enjoyment

> ***22*** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
>
> *(a) reasonable privacy;*
>
> *(b) freedom from unreasonable disturbance;*
>
> *(c) exclusive possession of the manufactured home site subject only to the landlord's right to enter the manufactured home site in accordance with section 23* [landlord's right to enter manufactured home site restricted]*;*
>
> *(d) use of common areas for reasonable and lawful purposes, free from significant interference.*

As I find that the landlord did infringe on the tenants' rights under section 21 and 22 of the *Act,* I must now consider whether the tenants are entitled to the monetary compensation requested. As stated above, the tenants bear the burden of proof in supporting the actual value of their loss, and that this loss stemmed directly from the other party's violation of the tenancy agreement of the *Act.*

The tenants requested compensation equivalent to one hundred percent of the rent. Although the tenants referenced a similar case, I am not satisfied that the tenants have sufficiently supported an identical entitlement, nor do I find the cases identical or similar enough in nature to support the amounts requested.

In this case, the specific ban imposed was for the period of December 11, 2018 to March 11, 2019. The monthly pad rental for this period was $476.12. I find that the tenants are entitled to a partial reimbursement in rent for the loss of the use of this facility for the three months. Accordingly, I allow the tenants a rent reduction of fifty percent for the three months, which amounts to a monetary award of $714.18.
In addition to specific loss of the value in the tenancy for the three months, I find that the tenants had demonstrated that the clubhouse was an important extension of their living space, and the denied use of this facility and threat of further bans had a more significant and lasting effect on the tenants for the remainder of the tenancy.

In addition to other damages such as a rent reduction, an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's behaviour. They are measured by the wronged person's suffering.

The damage must be caused by the deliberate or negligent act or omission of the wrongdoer. However, unlike punitive damages, the conduct of the wrongdoer need not contain an element of wilfulness or recklessness in order for an award of aggravated damages to be made. All that is necessary is that the wrongdoer's conduct was highhanded. The damage must also be reasonably foreseeable that the breach or negligence would cause the distress claimed.

They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought. The damage award is for aggravation of the injury by the wrongdoer's highhanded conduct.

Residential Tenancy Branch ("RTB") Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

> *An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.*

As noted above I find that the landlord's actions had significantly impacted the tenants' right to quiet enjoyment during this tenancy. I find that the tenants faced significant distress as a result of the landlord's actions. However, I do not find that any significant loss has been proven.

Although there is reference in the tenants' application to contraventions of the *Act* that could justify the imposition of a penalty, the Director has not delegated to me the authority to impose administrative penalties under section 80.3 of the *Act,* That authority has been delegated to a separate unit of the Residential Tenancy Branch. The administrative process is separate from dispute resolution and if an administrative penalty is levied against a landlord, it is a debt due to government and not the tenant.

I can, however, award nominal damages to a tenant when a landlord has breached a tenant's rights. As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the tenants further compensation in the amount of $500.00 in nominal damages for the distress they faced during this tenancy due to the landlord's actions.

I also allow the tenants to recover the filing fee for this application.

Conclusion

As the tenancy has ended, the tenants' application for the landlord to comply with the *Act* and tenancy agreement is cancelled.

I issue a $1,314.18 Monetary Order in favour of the tenants. The tenants are provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: August 23, 2021

Residential Tenancy Branch