



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RETIRE WEST COMMUNITIES
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC LRE FF

Introduction

This hearing was convened as the result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Manufactured Home Park Tenancy Act* (Act) for an order directing the landlord to comply with the Act, regulation or tenancy agreement and for an order to suspend or set conditions on the landlord's right to enter the rental unit, site or property.

The tenant, the owner of the manufactured home park, AV (owner), and two managers for the manufactured home park, CV and LV (managers) attended the teleconference hearing. The parties were affirmed and an opportunity to ask questions about the hearing process was provided to both parties. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed testimony and to make submissions to me. I have considered all of the relevant evidence and testimony provided presented by the parties and have referred to only that evidence which is relevant to the findings in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenant first stated that they did not receive the 16-pages of the documentary evidence uploaded by the landlord. When the tenant was made aware of the ability to have the matter adjourned, the tenant decided to waive seeing the documentary evidence from the landlord and wished to proceed with the understanding that all evidence could be considered by the undersigned arbitrator.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

During the hearing, the parties were advised that tenant's application related to the loss of quiet enjoyment under the Act was refused, pursuant to section 52(5)(c) of the Act, because their application for dispute resolution did not provide sufficient particulars, as is required by section 52(2)(b) of the Act. For example, the tenant writes that the landlord has more than once violated the tenants' right to quiet enjoyment but fails to indicate how and when. As a result of the above, the tenant is at liberty to re-apply, but are reminded to include full particulars of their application when submitting their application in the "Details of Dispute" section of the application, and are encouraged to use extra pages if necessary, as indicated on the application form. Given the above, the hearing proceeded with consideration of what the tenant described as the landlord trespassing on their property on April 27, 2021.

Furthermore, the site number of the home site was missing from the tenant's application and as a result, was amended pursuant to section 57(3)(c) of the Act.

During the hearing, after several interruptions, the tenant was cautioned to cease interrupting and speaking over the undersigned arbitrator. In addition, the tenant had telephone issues throughout the hearing including the sound of wind and going off and on the speakerphone and claims the problem with their phone only started a week before the hearing.

Issues to be Decided

1. Has the tenant provided sufficient evidence of trespassing by the landlord to justify the landlord having an order against them to restrict or set conditions on their right to enter the rental unit, site or property?
2. Is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The tenant alleges that the landlord trespassed on their property on April 27, 2021. The date provided by the tenant did not match the tenant's application, which states the date was April 26, 2021. The managers stated that no trespassing occurred and that the tenant was served a letter on April 22, 2021, advising that Telus would be attending the rental site to install a Fibre Optic (phone service line) in the crawlspace.

The tenant confirmed receiving the April 22, 2021. During the hearing, the tenant was advised that giving notice to attend to the rental site is not trespassing when for a reasonable purpose and that their application was without merit.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 23(b) of the Act applies and states:

Landlord's right to enter manufactured home site restricted

23 A landlord must not enter a manufactured home site that is subject to a tenancy agreement for any purpose **unless one of the following applies:**

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

[Reproduced as written]

Based on the evidence before me, I find the landlord provided the tenant sufficient notice of entry for a reasonable purpose as required by section 23(b) of the Act. I also

find that although the time of entry was missing from the notice of entry dated April 22, 2021, I find that such an omission does not equate to trespassing.

Therefore, I dismiss the tenant's application due to insufficient evidence without leave to reapply.

I do not grant the filing fee as the tenant's application was not successful.

The tenant is cautioned not to deny lawful access in the future or the landlord may issue a 1 Month Notice to End Tenancy for Cause.

Conclusion

A portion of the tenant's application was refused under section 52(5)(c) of the Act as the tenant failed to provide sufficient details of their application as required by section 52(2)(b) of the Act. The tenant is at liberty to reapply for that portion described above and are reminded to include full particulars of their claim in their application.

The tenant's claim of trespassing has no merit and is dismissed without leave to reapply.

The filing fee is not granted.

This decision will be emailed to both parties. The tenant has been cautioned.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 16, 2021

Residential Tenancy Branch