



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kuk and Cho Enterprises
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC FFT RP

Introduction

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

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 55;
- an order to the landlord to make repairs to the rental unit pursuant to section 27; and
- authorization to recover the filing fee for this application, pursuant to section 65.

BR represented 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 tenant's application for dispute resolution hearing package ("Application") and amendments by way of registered mail. In accordance with sections 81 and 82 of the *Act*, I find that the landlord duly served with the tenant's application and amendment. 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*.

Issues

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

Is the tenant 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 manufactured park tenancy began on June 27, 2013. The pad rental is currently set at \$454.00, payable on the first of the month.

The tenant filed this application as they feel that an ongoing dispute between the tenants and a neighbouring manufactured home remains unresolved, and is requesting that the landlord enforce the tenant's legal rights.

The tenants referenced a decision dating back to November of 2004 between the neighbouring tenants and the landlord. The neighbouring tenants had filed an application for a repair order, rent reduction, and monetary order. The dispute was in relation to the tenants' claim that they were never informed about a six foot easement adjacent to the neighbouring manufactured home, and their concerns that they would lose the six feet of their yard if the future tenant (the current tenant in this dispute) reclaims the use of the easement. All requested orders and claims were dismissed by the Arbitrator, and the file was closed, and therefore no action was taken at that time by the landlord.

The tenant applicant in this dispute testified that due to the neighbour's encroachment, they do not have the required five feet setback, and consequently, the tenant has been unable to maintain or repair their manufactured home, or build a privacy fence. The tenant applicant testified that current setback is only somewhere between twenty-six and twenty-nine inches. All parties in the hearing testified to the significant amount of tension between the tenants on the neighbouring properties. The tenant applicant testified that they have been on the receiving end of intimidating behaviour and aggressiveness from the neighbouring tenants, and do not feel safe or comfortable outside of their manufactured home. The tenants submitted the measurements taken by the municipal building inspection division on November 10, 2006 in their evidentiary materials.

Agent for the landlord testified that they had taken on their current role in May of 2010, and that they did not have sufficient information to determine the facts in this case in terms of the legal entitlements for the neighbouring manufactured homes. The landlord submitted evidence to show that the landlord was compliant with section 12(1)(b) of the Manufactured Home Park Tenancy Regulation by including in the tenancy agreement the boundaries of the manufactured home site measured from a fixed point of reference.

Analysis

I have considered the submissions in relation to this dispute, and I accept the landlord's testimony that they do not have sufficient information to determine the legal entitlements for the tenant applicant in this dispute, and the associated remedies to resolve this dispute.

I find that this dispute involves the setback requirements which are set by the municipal bylaw office, and although a dispute does exist between the neighbouring tenants, I am not satisfied that any remedies can be provided to the parties under the MHPTA at this time. I find that a determination is required by the municipal division that oversees the enforcement and inspections of setback requirements. I decline to hear this matter as I find the underlying issue does not fall within the jurisdiction of the residential tenancy branch, and I refer both parties to consult with the municipal office responsible for the determination and enforcement of the setback requirements.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I did not make any findings about the merits of the dispute, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

Conclusion

I find that a determination is required by the municipal division that oversees the enforcement and inspections of setback requirements. Accordingly, I decline to hear this matter as I find the underlying issue does not fall within the jurisdiction of the residential tenancy branch. The parties are referred to the municipal office responsible for the determination and enforcement of the manufactured home setback requirements.

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: December 22, 2021