



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, FFT

Introduction

Pursuant to section 51 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order requiring the landlord to carry out repairs, pursuant to section 26; and
- an authorization to recover the filing fee for this application, under section 65.

I left the teleconference connection open until 11:19 A.M. to enable the landlord to call into this teleconference hearing scheduled for 11:00 A.M. The landlord did not attend the hearing. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed she understands it is prohibited to record this hearing.

Per section 87(5) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000."

I accept the tenant's testimony that landlord was served with the application and evidence (the materials) by registered mail on February 11, 2022 in accordance with section 82(1)(c) of the Act (the tracking number and the landlord's address are recorded on the cover of this decision).

Section 83 of the Act provides that a document served in accordance with Section 82 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the landlord is deemed to have received the materials on February 16, 2022 in accordance with section 83(a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – Tenant's claims

The tenant is seeking an order requiring the landlord to repair a fence and an authorization to maintain the fence.

The tenant's application states:

Jan 14 landlord's worker shoveled the roof of the unit next door and took out 18' of my fence. I contacted landlord on Jan 15 he not only said I could fix it myself but that next spring I would have to move my fence at my expense. The fence was built with old landlord permission in 2015. RTB suggested it may be able to be grandfathered. My dog is getting loose, neighbors dogs are getting in my yard, I am scared a dog fight may happen. fence is buried under 1-2' of very compact snow

The tenant affirmed: "I should have been more specific with my words".

Based on the application and the tenant's testimony, I find the tenant applied for an order for repair. The tenant is at liberty to submit an application for an authorization to maintain the fence.

Issues to be Decided

Is the tenant entitled to:

- an order requiring the landlord to carry out repairs?
- an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the tenant's obligation to present the evidence to substantiate the application.

The tenant stated the tenancy started in November 2014. Monthly rent is \$217.50, due on the first day of the month.

The tenant testified the prior landlord authorized her to build a fence in her rental pad. The tenant said the agent for the current landlord damaged the fence by ripping down the wire mesh on January 14, 2022. The tenant submitted photographs showing a damaged wire mesh.

The tenant submitted into evidence text messages sent by the landlord on January 15, 2022:

Landlord: if you want to put the wire back in place for now, I'm happy with that. Then after the weather is cleared and spring is sprung we will measure the distances and I'll identify where you can build your fence to park specifications.

Tenant: I put the fence where [previous landlord] said I could. I can't put the mesh back up as it is ripped in places and buried under snow. So I'm supposed to fix something that I didn't wreck?

Landlord: ... My decision stands, and if you want to go to arbitration we'll go to arbitration.

The tenant served a letter to the landlord on January 17 or 18, 2022 by attaching it to the landlord's door. The letter states:

Your worker knocked down approx.. 18' of my fence and buried it under ½ - 1 ½ fee of compact snow.

[...]

There was nothing in my agreement I signed stating anything about fences and Trailer Park Specifications.

[...]

Arbitration said I needed to notify you in writing of my expectations. It has already been 5 days since I notified you of the damage. I would expect the fence to be fixed by Sunday January 23 or I will formally be filing for arbitration on Monday January 24.

The tenant affirmed the fence has not been repaired.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26(5) of the Act states:

A landlord is not required to maintain or repair improvements made to a manufactured home site by a tenant occupying the site, or the assignee of the tenant, unless the obligation to do so is a term of their tenancy agreement.

Residential Tenancy Branch Policy Guideline 01 states:

4. The tenant must obtain the consent of the landlord prior to erecting fixtures, including a fence.
5. Where a fence, or other fixture, is erected by the tenant for his or her benefit, unless there is an agreement to the contrary, the tenant is responsible for the maintenance of the fence or other fixture.
6. If, at the end of the tenancy, the tenant removes the fixture erected by him or her, he or she is responsible for repairing any damage caused to the premises or property.
7. If the tenant leaves a fixture on the residential premises or property that the landlord has agreed he or she could erect, and the landlord no longer wishes the fixture to remain, the landlord is responsible for the cost of removal, unless there is an agreement to the contrary.
8. If the tenant leaves a fixture on the residential premises or property that the landlord did not agree the tenant could erect, and the landlord wishes the fixture removed, the tenant is responsible for the cost of removal.
9. If the tenant leaves a fixture on the residential premises or property at the end of the tenancy, and the landlord does not remove it prior to the commencement of the following tenancy, the landlord is responsible for future repairs, unless the fixture only remains because the in-coming tenant agreed to maintain it, in which case it may be found that the ownership of the fixture passes to the in-coming tenant.
10. Where a fence or fixture is placed on the premises or property by the tenant, at the request of the landlord, the landlord may be held responsible for its repair and maintenance.

Based on the tenant's convincing testimony, I find the tenant served the letter on January 18, 2022. The landlord is deemed to have received the letter on January 21, 2022, per section 83(c) of the Act.

Based on the tenant's testimony, the photographs, the letter, and the text messages dated January 15, 2022, I find the prior landlord authorized the tenant to build a fence, the parties did not have an agreement about the obligation to maintain or repair the fence, the landlord's agent damaged it on January 14, 2022 and did not repair the fence.

Per section 26(5) of the Act, the landlord is not required to repair the fence.

As such, I dismiss the tenant's application for an order for the landlord to repair the fence.

The tenant must bear the cost of the filing fee, as the tenant was not successful.

Conclusion

I dismiss the tenant's claim 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 26, 2022

Residential Tenancy Branch