Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LAFE HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RP, LRE, OLC, FFT

Introduction

The Tenant RG filed an Application for Dispute Resolution (the "Application") on May 30, 2022 seeking the following:

a. compensation for monetary loss or other money owed
b. repairs made to the unit, site, or property, after contacting the Landlord in writing to make repairs, not yet completed
c. suspension or set conditions on the Landlord's right to enter the rental unit or site
d. the Landlord's compliance with the legislation and/or the tenancy agreement
e. reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 67(2) of the *Manufactured Home Park Tenancy Act* (the "*Act*") on October 7, 2022. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to present oral testimony during the hearing.

Preliminary Matter – the single tenancy and manufactured home site from the Applicant

The Tenant RG filed the Application online on May 30, 2022. This was for the manufactured home site listed on the cover page of this document. They provided the name of a second Tenant on their Application, BA. There is a separate manufactured home site provided with contact information for that second Tenant BA.

The *Act* s. 51(1)(b) refers to a person's rights and obligations under the terms of a tenancy agreement that relate to that tenant's use, occupation or maintenance of the manufactured home site.

In the hearing and in their submissions, the Tenant RG, and the second Tenant listed as BA, provided testimony on their own manufactured home site, as well as that of the second Tenant listed as BA, who lives at a separate manufactured home site. Ostensibly, some issues the Tenant RG faces in this dispute with the Landlord affect the Tenant BA in the same way.

I am bound in this hearing and this decision to the issues involving a single manufactured home site falling under a single tenancy agreement. This is the manufactured home site in which the Tenant RG resides. Where possible, I refer to the Tenant BA's statements as witness statements. This decision and any findings of fact apply only to the manufactured home site for the Tenant RG, who is the Applicant. I consider the Tenant BA a witness in this matter. The Tenant BA must make a separate Application for any matter of dispute with their Landlord. Any finding of fact I make in this decision strictly does not apply to the manufactured home site belonging to the Tenant BA – that is a separate tenancy that must undergo a separate hearing process, with no authority in place to join it to the Tenant's Application here.

I refer to the Applicant RG, as the "Tenant" in this decision. I refer to BA as the "witness". I have amended the Tenant's Application to exclude the Tenant BA as an Applicant in this hearing. This is an application of s. 55(1) and 55(2) of the *Act*.

Preliminary Matter – evidence disclosure

The Tenant received the Notice of Dispute Resolution Proceeding (the "Notice") document from the Residential Tenancy Branch on June 8, 2022. In the hearing the Tenant provided that they sent this to the Landlord via email on June 8, and via regular mail on June 11. The Tenant provided a receipt from the post office to show this. The Landlord acknowledged they received the Notice from the Tenant in this way.

The Tenant provided evidence to the Residential Tenancy Branch when they made their Application on May 30.

The Landlord duly served their written response including evidence to the Tenant. The Tenant acknowledged this in the hearing.

The Tenant made another submission on September 23 that included videos and other pictures. This was in response to what they received as evidence and submissions from the Landlord.

In the hearing the Landlord stated they were not aware of videos. The Tenant they stated they advised the Landlord that material was submitted to the evidence upload site of the Residential Tenancy Branch. According to the Tenant, the Landlord should have been able to sign in and view the videos on the upload site.

The Residential Tenancy Branch has in place a set of rules that govern the hearing process. As stated in Rule 1.1, their objective is "to ensure a fair, efficient and consistent process for resolving dispute for landlords and tenants." These are published in line with the principles of administrative fairness.

There is a rule specific to the inclusion of evidence an applicant does not submit at the time they make an application: Rule 3.14. This states that documents or digital evidence intended to be relied on at the hearing must be received by the other party and the Residential Tenancy Branch no loess than 14 days before the hearing.

This refers to service by the Applicant (*i.e.*, the Tenant), to the Respondent (*i.e.*, the Landlord). The Tenant did not serve additional evidence to the Landlord as stated in the hearing. Referring the other party to the Residential Tenancy Branch evidence upload site is not a method of service outlined in s. 82 of the *Act*.

Rule 3.14 accordingly refers to Rule 3.17; this grants an arbitrator discretion to accept evidence in these circumstances. By applying this rule, I do not accept the September 23 evidence provided by the Tenant to the Branch, and no part of it forms the basis for any part of my decision herein. The Tenant did not ensure its service to the Landlord; therefore, the Landlord would be unreasonably prejudiced should that evidence receive consideration, with no opportunity for them to review it prior to the hearing.

The Tenant submitted a document entitled "Cost Breakdown" on that same date. There is no evidence the Tenant served this document separately to the Landlord. Minus this proof, I omit this specific document from consideration herein. I find it more likely than not the Tenant submitted to the evidence upload site at the same time as their other evidence on that date, and did not serve it separately to the Landlord as strictly required.

Issue(s) to be Decided

a. Is the Tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 60 of the *Act*?

b. Is the Tenant entitled to completion of repairs they previously requested, pursuant to s. 26?

c. Is the tenant entitled to an order that suspends or otherwise limits the landlord's right to enter, pursuant to s. 63?

d. Is the Landlord obligated to comply with the legislation and/or the tenancy agreement, pursuant to s. 55?

Background and Evidence

On the Application, the Tenant set out the monthly rent amount of $490 paid on the first of each month. In the hearing they specified that this tenancy began in August 2002. The Tenant did not provide a copy of their tenancy agreement, and because the Landlord only came on when the manufactured home park changed ownership in 2007, the Landlord had never seen that specific agreement.

The Landlord in their evidence provided the text of clauses from the standard agreement (that of the Mobile Home Association Tenancy Agreement, and the "BC Tenancy Agreement" and the manufactured home park's own rules) they feel apply to the current situation:

- "The tenant agrees that the amenities and fixtures on the Site . . .are the property of the tenant and that the tenant is responsible for their maintenance and upkeep."
- "The landlord is not required to maintain or repair improvements made to the manufactured home site by a tenant occupying the site . . . unless the obligation to do so is a term of this tenancy agreement."
- "Any fencing, plants, shrubs or trees that are present now or are added in the future are, and remain the responsibility of the Tenant, and must be maintained in good condition by the Tenant at the Tenant's cost."
- "The Landlord reserves the right to remove or prune any tree or shrub on any Site or in the Park."

- “All fencing must conform to the zoning by-law concerning heights and must be stained or painted to prevent deterioration and be maintained as required.”

Though not provided in their evidence, the Landlord noted there were park rules in place. The Tenant stated they were familiar with the rules and read them when they received them originally.

a. compensation for monetary loss or other money owed

The Tenant presented that they maintained the trees present on the manufactured home site. The Landlord removed trees that ran the length of their property when their immediate neighbour complained about them to the Landlord, with the removal in May 2021. The Tenant presented that the Landlord wanted to take these particular trees out since the manufactured home park ownership changed.

The Tenant presented this tree removal took some time to complete, involving machines and noise over the timeframe of two weeks. This work prevented them from working from their home during this time, with work from their office not being an option at that time. They had to accept unpaid leave from work. Specifically, they claim one-quarter salary for the time the Landlord was making noise in the yard – this “went on for a couple of weeks”. Additionally, they asked for the equivalent of one-half of their salary during this time period because of the interruption and difficulty this caused at their job, with an angry boss. The Tenant’s evidence for this piece of their claim was a payslip covering the period in question, showing the use of leave without pay for 39.15 hours.

The Tenant also claimed compensation for personal items broken during the tree removal. This includes: a large mirror (shown in a picture), damaged post holders, a damaged part of their roof on the manufactured home, and damaged shingles on their shed roof.

On their Application, the Tenant also specified compensation for their maintenance of the trees over the years, and the cost of a new fence. This piece of their claim was originally shared jointly with their immediate neighbour, BA. The witness BA described doing maintenance on the trees since 2012 that cost them money as an out-of-pocket expense.

On their Application, the Tenant specified the compensation total amount of $2,500.

The Landlord in a written submission defended their removal of the tree running along the left side of the Tenant's manufactured home site. They did this in the situation where the tree had become "so overgrown as to the likelihood of a falling limb causing damage to the infrastructure or to the home itself." They had to step in and remedy the situation. As evidence of this, the Landlord provided a photo that show limbs from the hedge row in question extending over beyond the homes, with a "mess of limbs".

The Landlord described this particular type of tree as that which "can grow both vertically and laterally by as much as four feet per year in the right conditions". This makes them subject to splitting from the main trunk in situations of high winds or heavy snowfalls, and that can "cause considerable damage especially to a manufactured home."

In this situation, the trees "never should have been planted so close to the units." The Landlord cited two other park residents who stated their concerns about tree limbs coming through the roof. The Landlord presented a copy of the email from the other resident dated March 27, 2021, and another note of thanks from another resident who described the damage being caused by the trees, which caused a leak and the needed replacement of shed roof panels.

According to the Landlord, they chose a tree removal service that could accommodate the work in spring 2021. The Landlord "knew [this company] would be careful and respectful to the tenants and were insured against any damage that might happen and promised to keep the noise level to a reasonable level."

In the hearing the Landlord reiterated that their effort at removing the trees was not something done "willy-nilly": this was a big effort, and costly, at around $10,000. Another park resident in particular raised their concern because they had to replace their roof once. The Landlord spoke to the Tenant's other neighbours who wanted the trees removed, and the Landlord knew that the Tenant was "vehemently opposed to it."

The Tenant in the hearing reiterated their concern with the loss of privacy that came with the removal of the trees. The described huge trees throughout the manufactured home park and noted "only 4 branches came down within 20 years".

b. <u>Landlord's completion of repairs previously requested</u>

On their Application, the Tenant provided that they had a video of when they asked the Landlord for a repair of the fence, and the Landlord stating it is not their responsibility.

This video is not in the Tenant's evidence. The Tenant provided images of the fence, with individual sections missing or haphazardly held together, with large portions of the fence leaning at an awkward angle. It is apparent the fence is in some need of repair.

In the hearing, the Tenant described this fence as "inadequate", particularly since the Landlord removed trees. They stated they communicated this to the Landlord several times, for the fence to be installed. The Tenant stated: "I will maintain fences that I installed."

The Tenant also requested a fence to the height of 8 feet, for privacy and security reasons. They provided pictures of unknown individuals in the area around the manufactured home site, and a park manager present behind their site.

In the hearing the Landlord maintained that the fence is the Tenant's responsibility, referring to individual pieces of the tenancy agreement they submitted in their evidence. That fence was in place when the Tenant purchased the manufactured home. The Landlord noted they had replaced the removed trees with other types of shrubbery that will grow a solid six feet tall, and provided a photo of this in their evidence.

c. suspension/set conditions on the Landlord's right to enter the site

On their Application, the Tenant described people "sent by the Landlord" without notifying the Tenant. This means the Landlord "feels [they] can trespass on our lots anytime [they choose] because [they] own the land."

In the hearing, the Tenant listed the "tree removal guy" and an "assessor" who attended to their manufactured home site two years ago.

In their written response, the Landlord referred to this issue as one of "trespass". They stated: "I apologize for any stress the tree removal contractors may have caused." The Landlord speculated that the tree removal contractors may have needed a better look and thereby entered into the Tenant's manufactured home site. The Landlord pledged to meet any contractor or at least have the caretaker involved in any visits.

d. the Landlord's compliance with the Act *and/or the tenancy agreement*

On their Application, the Tenant listed a number of issues:

- for the Landlord to quit sending pictures of their manufactured home and site to others
- stop burning leaves outside the back of the site, or at least supervise that burning
- lot lines

In the hearing, the Tenant described their knowledge of "at least one person the Landlord sent [pictures] to" and named that individual as another resident in the park. The Landlord acknowledged doing so, in order to "show [that other resident] what had come in . . ."

The Tenant described the Landlord's burning of leaves behind the manufactured home site. They noted the local fire department attended one time to investigate the matter. They are aware there is no water source present in that area.

The Landlord described burning leaves that come off from residents' manufactured home sites. The Landlord collected this material and will burn it when the weather is appropriate. They realized this was "fairly close to the properties" and so "moved the pile further away." The Landlord stated they had talked to the local fire marshal, and will "think about having people take stuff away on their own."

In their written response, the Landlord acknowledged they acted on the Tenant's suggestion, and thus moved the burning further away. They noted they follow the local municipality's rules on burning only on allowable days "when the environmental index is fair or good."

On their Application, the Tenant referred to "reassessment of lot lines" because of discrepancies where the lot lines are. The Tenant provided a photo of the outer edge of the manufactured home site, describing that photo thus: "[The Landlord] measured from [the neighbour's] lot and indicated that [the neighbour's] lot goes 1.5 into my driveway, when I measure from my porch, it goes to the hedge." The Tenant provided an image of the site outline, and an image showing "where the fence was with previous owner."

In their written response, the Landlord referred to the Tenant not granting the Landlord permission to measure. This was due to "which side the hedge was on", *i.e.*, the trees that were removed in spring 2021. The Landlord was not aware of what the previous Landlord gave to the Tenant in terms of a tenancy agreement.

Analysis

The Landlord presented standard terms from any agreement they would have in place with manufactured home park residents. I find it more likely than not that these reflect what is in place with the rules, based on the Landlord's testimony. I also find this framework guided any discussion had by the Landlord with the Tenant on the issue of the trees that were removed. The onus of proof in this hearing is on the Tenant, and they did not provide any park rule or other terms from an extant tenancy agreement that show otherwise. In sum, the Landlord provided the material that shows the manufactured home park's policy and/or rules on the subject matter immediately at issue in this hearing.

From this, I conclude:

- There is no term in any tenancy agreement that requires the Landlord specifically to maintain or maintain amenities and fixtures on the manufactured home site.
- The Landlord had the right to remove any tree on any manufactured home site in the park, including that of the Tenant here. The Tenant did not present evidence to show the Landlord was prohibited from this specifically.

a. compensation for monetary loss or other money owed

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish all of the following four points:

1. That a damage or loss exists;
2. That a damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or the tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 60 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party.

On their Application, the Tenant made a threefold request for compensation: a recovery of wages lost during tree removal; money for personal property damaged; compensation for their own work maintaining the trees during their tenancy.

I find, in regard to the removal of the trees, that the Landlord did not violate the *Act* or the tenancy agreement. The matter lies on the spectrum of a violation of the Tenant's right to quiet enjoyment; however, they did not specify this in their Application, and there was no amount of compensation proffered for this ostensible breach by the Landlord here.

Aside from this, I refer to the pieces of an agreement that the Landlord has in place, again with no contradictory evidence from the Tenant. I find the Landlord has the right, as a matter of safety or risk of damage to existing manufactured homes in the park, to remove any tree in the park. Because I find there was no breach of the *Act* or the tenancy agreement by the Landlord here, the Tenant is not successful in their claim for compensation.

Further, above I found the Tenant did not properly disclose specifically a calculation of their claim. That individual piece of evidence was excluded from my consideration for that reason. Additionally, the Tenant did not provide itemized receipts or invoices for personal items that were allegedly damaged during the tree removal process. If the Tenant required replacement of roofing either on the manufactured home or their shed, there is no evidence that work took place or that the Tenant paid anything for it. As well, storage of a mirror on a driveway is not a practical or acceptable area to protect that individual item from damage of any nature.

In regard to mitigating their damage or loss, I find the Tenant did not provide a reasonable explanation as to why they could not make alternate arrangements for work. They made no other arrangements for remote work if they were prevented from working in their own workplace at that time.

The Tenant's Application refers to the amount of $2,500; however, there is no calculation of what that amount represents in the Tenant's evidence. Chiefly for this reason, I dismiss the Tenant's Application for compensation, without leave to reapply.

b. <u>Landlord's completion of repairs previously requested</u>

I find the Landlord did not breach either the tenancy agreement or the *Act* in not repairing the Tenant's own fence on the manufactured home site. I find the fence is the

property of the Tenant, and they are responsible for its maintenance and upkeep. This automatically precludes any replacement of the fence by the Landlord.

The Tenant did not provide positive proof of their interaction with the Landlord on this specific issue. There is no record of discussions, or other communication in the evidence.

For these reasons, I dismiss the Tenant's Application for repairs, without leave to reapply. This also applies to the Tenant's request for installation of a new fence.

c. suspension/set conditions on the Landlord's right to enter the site

The *Act* s. 23 sets limitations on a landlord's right to enter the manufactured home site. This is either with a tenant's permission, or with written notice no less than 24 hours in advance.

I find the Tenant presented scant evidence of the Landlord violating their right to enter the site. The Landlord confirmed that contractors must have entered the site for the purposes of planning tree removal. I find this was not ongoing and the Tenant presented no evidence of that.

From the Landlord's written description in their response, I accept that they are well aware of the Tenant's rights on this particular piece of a landlord-tenant relationship. I grant no suspension or other set conditions on the Landlord's right to enter the site, referring both parties only to s. 23 of the *Act*.

In line with this, I dismiss this piece of the Tenant's Application, without leave to reapply.

d. the Landlord's compliance with the Act *and/or the tenancy agreement*

In response to my direct question in the hearing, the Tenant answered that they knew of only one time when the Landlord provided pictures of their home/site to others. Because of this, I find it is not an issue requiring a separate ruling or objective finding against the Landlord. It was a one-time error on the part of the Landlord here.

From the Landlord's response and written account, I find they acknowledged the issue of burning leaves in relatively close proximity to the Tenant's manufactured home site. They moved that practice further away from the Tenant's own unit. They referred to

local bylaws, and communication with the fire marshal. From this, I conclude the problem was rectified prior to the hearing.

Regarding the lot lines, I order the Tenant to comply with any request from the Landlord to properly measure the space involved. This would involve the Landlord's entrance into the manufactured home site to which the Tenant is adamantly opposed. There is no other way to rectify the issue without a proper measurement by the Landlord, so I strongly urge the Tenant to re-evaluate their mode of communication with the Landlord in order to rectify this issue which may be legitimate, and now a palpable concern after removal of trees that blurred the manufactured home site lines. In sum, this issue can only be rectified with the Tenant's cooperation.

Overall, I find the Tenant used the opportunity to express dissatisfaction on a great many issues they perceive as stemming the Landlord's management of the manufactured home park. The Tenant stated their mode of simply avoiding the Landlord at all costs. I encourage the Tenant to not continue to emphasize the differences they have with the Landlord and try to find some similarities.

I find the complaints registered by the Tenant were either insubstantial, previously acknowledged and addressed by the Landlord, or require the Tenant's cooperation in order to resolve. For this reason, I dismiss this part of the Tenant's Application, without leave to reapply.

Conclusion

For the reasons above, I dismiss the Tenant's Application in its entirety, without leave to reapply. Because the Tenant was not successful in their Application, I find they are not entitled to recover the $100 filing fee paid.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: November 6, 2022

Residential Tenancy Branch