



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, PSF, LRE, OLC, FFT

Introduction

On September 7, 2022, the Tenants applied for a Dispute Resolution proceeding seeking access for the Tenants pursuant to Section 24 of the *Manufactured Home Park Tenancy Act* (the “*Act*”), seeking the provision of services or facilities pursuant to Section 55 of the *Act*, seeking to set conditions on the Landlord’s right to enter pursuant to Section 63 of the *Act*, seeking an Order to comply pursuant to Section 55 of the *Act*, and seeking to recover the filing fee pursuant to Section 65 of the *Act*.

Both Tenants attended the hearing, with R.C. attending as an advocate for the Tenants. J.H. attended the hearing as an agent for the Landlord, and D.R. attended the hearing as counsel for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance, with the exception of D.R., provided a solemn affirmation.

Tenant M.C. advised that their Notice of Hearing and evidence package was served to the Landlord by registered mail on September 21, 2022. J.H. confirmed that the Notice of Hearing package was received; however, D.R. advised that the Tenants’ evidence was numbered from 1 to 19, but pages 1 and 2 were not included. As such, the Landlord did not know what these pieces of documentary evidence were.

M.C. reviewed their documentary evidence and could not identify which pages were missing. As well, when he was questioned, he could not explain why their documentary evidence was not submitted to the Residential Tenancy Branch in the same format as what was served to the Landlord. Moreover, in adding to the confusion, he could not identify which documents submitted to the Residential Tenancy Branch were in turn served to the Landlord. Given that the Tenants' evidence was not submitted to the Residential Tenancy Branch in an organized and clear format that matched what was served to the Landlord, and as some pages were missing, I am not satisfied that the Tenants complied with Rule 3.6 of the Rules of Procedure (the "Rules"). As such, I have excluded this evidence and will not consider it when rendering this Decision.

D.R. advised that the Landlord's evidence was served to the Tenants by hand, by way of a process server, on November 15, 2022, and M.C. confirmed that this was received. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules, I have accepted this evidence and will consider it when rendering this Decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, the Tenants were advised to prioritize their claims to make the most efficient use of the one-hour hearing time. The Tenants chose to address an issue with access to the common areas of the park. The Tenants are at liberty to apply for any other severed claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to access to the common areas of the Manufactured Home Park?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 1, 2017, that rent was established at \$517.00 per month, and that it was due on the first day of each month. A copy of the signed tenancy agreement was not entered into evidence, by either party, for consideration. A copy of the Rules and Regulations of the park was submitted by the Landlord for consideration, however.

M.C. advised that their most pressing issue is the restriction of access to the back of their site. He testified that a neighbour's gate has reduced access to the common areas of the park behind their site. As such, they are not able to wash or clean their manufactured home, and they would like the gate removed.

R.C. attempted to shed light onto the Tenants' concerns, and stated that there is a fence on either side of the Tenants' manufactured home, and a shed that the neighbour has constructed. The gate in the fence, and the shed, have restricted the Tenants' ability to access the back of the manufactured home, and they would like these removed.

M.C. submitted that they brought up these issues to J.H. in September 2022, and J.H. informed them that they must get approval each time they need to access the common areas behind their manufactured home site. However, this email was not submitted as documentary evidence for consideration. He confirmed that the site that was rented to them included only the footprint of the manufactured home, and that any areas beyond this footprint were common areas of the park. As well, he noted that the Rules and Regulations of the park stated that common areas were for the use of everyone in the park.

D.R. advised that the site that was rented to Tenants included only the footprint of the manufactured home, that any areas beyond this footprint were common areas of the park, and that each resident of the park, pursuant to the park Rules and Regulations, must obtain the Landlord's approval before making any changes or improvements to the common areas. He submitted that this issue arose out of a dispute that the Tenants had with their immediate neighbour over a fence between the two sites. As well, he

confirmed that there is a large area behind the two sites that is a common area of the park, and that any person is permitted to use the common areas.

He stated that the Landlord has informally permitted residents of the park to use portions of the common areas as their “backyards”, but these areas were not incorporated as part of any person’s tenancy agreement. As well, it was understood that each resident of the park would respect the other’s “backyard”. He submitted that the fencing in question does not prevent the Tenants from accessing their “backyard”, nor do the Tenants require the Landlord’s permission to enter their “backyard”. It is the Landlord’s position that the Tenants want to walk through one specific side of their site to access their “backyard”, and that it is the Tenants’ behaviours that are the source of the conflict involving the neighbour.

J.H. referred to pictures submitted as documentary evidence that provide context to the demarcation of the sites, and of the fencing. She stated that it is the Landlord’s position that the site that was rented to the Tenants included only the footprint of the manufactured home, and that any areas beyond this footprint were common areas of the park. Furthermore, to reiterate, any areas in between the Tenants’ site and the neighbour’s site, and any areas behind the sites were common areas of the park. She testified that there is nothing preventing the Tenants from accessing the common areas behind their site, and she denied sending an email to the Tenants requiring them to get permission any time they would like to access this “backyard” area.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 1 of the *Act* provides the following definitions for relevant terms related to this dispute:

"common area" means any part of a manufactured home park the use of which is shared by tenants, or by a landlord and one or more tenants;

"manufactured home park" means the parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located;

"manufactured home site" means a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home;

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence, over and above their testimony, to establish the validity of their claim. Moreover, given the contradictory testimony and positions of the parties, I may also need to turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, the undisputed and consistent evidence is that the site that was rented to the Tenants only consisted of the footprint of the manufactured home, and that any other areas beyond this footprint were considered common areas of the park. Furthermore, the Rules and Regulations of the park stipulate that only the Landlord may determine how these common areas are utilized.

While it appears that the Landlord has informally granted the residents of the park the ability to use some of these common areas as a means to provide a façade of personal space, there is no documentary evidence before me to support a conclusion that any of the common areas surrounding the Tenants were somehow incorporated into their tenancy agreement as part of their site.

Moreover, I do not find that the Tenants have provided any documentary evidence to support their position that the Landlord has somehow prevented them from accessing the common areas behind their manufactured home. As such, I am satisfied that the Tenants have failed to make any compelling or persuasive arguments that would establish that there was a breach of the *Act* by the Landlord. Consequently, I dismiss their Application, seeking access to the common areas of the park, in its entirety.

As the Tenants were unsuccessful in their Application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, the Tenants' Application, with exception to the matters that have been severed, is dismissed with 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: December 7, 2022

Residential Tenancy Branch