



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding PLEASANT VALLEY MHP INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RR, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants October 20, 2022 (the "Application"). The Tenants applied as follows:

- For compensation for monetary loss or other money owed
- To reduce rent for repairs, services or facilities agreed upon but not provided
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement

The Tenants appeared at the hearing with T.L., their Legal Advocate. W.S. appeared at the hearing for the Landlord. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence, and no issues arose.

The Tenants had filed an Amendment and W.S. confirmed they were prepared to address the issues in it.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed?
2. Are the Tenants entitled to reduce rent for repairs, services or facilities agreed upon but not provided?
3. Are the Tenants entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement?

Background and Evidence

The main issue between the parties is over a section of land at the back of the site. The Tenants submit that the section of land is part of the site and that the site goes from the road in the front to the alley in the back. W.S. submits that the section of land has never been part of the site. The issue has arisen because W.S. says they need to use the section of land to complete a required update to the electrical in the park.

The Tenants seek the following:

- An order that the site length is from the front road to the back alley such that the Tenants can continue to use the land
- In the alternative to the above, compensation of \$1,000.00 and a rent reduction of \$1,000.00 for loss of site size, physically demanding work, loss of storage area, loss of one shed, loss of trees and loss of recreational areas
- Compensation for loss of a parking space in the park

In relation to the tenancy agreement in this matter, the Tenants testified that there is a written agreement. W.S. testified that the tenancy was a verbal agreement. The parties agreed on the following. The original tenancy agreement was with the prior owner of the park. The tenancy started in 1975 and is a month-to-month tenancy. Rent is \$590.00 per month due on the first day of each month.

Site size

The Tenants and T.L. provided the following testimony and submissions.

There have never been any markers to establish the site size. The Tenants were never provided with a map of the park or site showing the boundaries of the site. The Tenants always understood the site to go from the front road to the back alley. The Tenants used the section of land now at issue (the "Land") as part of the site and put three sheds on it approximately 30 years ago. The home and three sheds were placed on the site with the direction and approval of the prior owner of the park. The Tenants were using the Land for their three sheds when the Landlord purchased the property.

In August 2022, the Tenants were told to clear the Land due to electrical repairs needed in the park. The Tenants did move their three sheds off the Land; however, this was a courtesy and not an acknowledgement that the site did not include the Land. The Tenants' relatives and friends did a tremendous amount of work to move the three sheds and the Tenants are seeking compensation for this. The Tenants' sheds were moved closer to their home so the Tenants now have a much smaller yard. The Tenants calculate that they have lost 14% of their space.

The Tenants take issue with the statement of the Landlord that the Land is needed for the Landlord to do electrical repairs because the Landlord has never provided the Tenants documentation or evidence showing this. Nor has the Landlord submitted sufficient evidence showing the Land must be used for the electrical repairs.

The Tenants submit that the site has always been from the front road to the back alley; however, if this is not accepted, the Tenants submit that estoppel applies because the previous owner of the park and the Landlord have allowed the Tenants to use the Land for decades which has established the site as being from the front road to the back alley.

W.S. provided the following testimony and submissions.

The original owner of the park told the Tenants the site was 50 x 100 feet. The Tenants' sheds were put on the Land 30 years ago, not in 1975.

The Landlord has had trouble getting documentation from BC Hydro showing the Land needs to be used for the electrical upgrades which is why the Landlord has not provided

this to the Tenants or submitted it as evidence. W.S. told the Tenants the Land is needed based on what W.S. has been told. The Land cannot be used once the electrical is upgraded because there will be easements and restrictions about what can be on the Land.

The Tenants have always known the Land was not part of the site which is shown by the fact that they planted cedars at the 100-foot mark of the site and put their sheds on skids so they could easily be moved when needed. The Tenants' rent did not increase when the previous owner allowed them to put the three sheds on the Land.

The Landlord is willing to agree to the site being 110 feet long and 50 feet wide. The Landlord has submitted a map with a red line and blue line showing where the 100-foot mark on the site is.

In reply to the Landlord's position, the Tenants and T.L. stated as follows.

The Tenants submitted a photo showing that the 100-foot mark on the site does not even cover the area that the home is on and therefore could not have been the agreed upon length of the site. The Landlord's map showing the 100-foot mark is further towards the back alley is wrong. The previous owner supervised the placement of the home and therefore the site must have been more than 100 feet long.

The Tenants agree the previous owner said the site was approximately 50 x 100 feet; however, the key word is "approximately". The site dimensions were just stated "off the top of the head" of the previous owner. The previous owner allowed the Tenants to put the sheds on the Land and therefore this must have been part of the site and within the approximation of 50 x 100 feet. The first shed was put on the Land 30 years ago and the other two were put there shortly after. The sheds were not put on skids so they could be moved, they were simply built this way. The cedars were planted after the sheds were put in to make the view nicer. The Tenants have always assumed the site went from the front road to the back alley.

Parking area

The Tenants took issue with losing a parking area in the park 16 years ago. The Tenants testified that they had use of the parking area from 1975 up until 16 years ago.

W.S. testified that the parking area was simply moved and the Tenants chose not to park at the new location due to their own security concerns.

In reply, the Tenants testified that the alternative parking area was unacceptable.

Analysis

Pursuant to rule 6.6 of the Rules, it is the Tenants as applicant who have the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Site size

I find the site length is from the front road to the back alley as stated by the Tenants.

I accept there was a discussion between the Tenants and previous owner about the site being 50 x 100 feet; however, I accept this was an approximation as stated by the Tenants. The natural boundaries of the site would be the front road to the back alley. If the previous owner meant to keep the Land as a common area, I would expect them to have put this in writing; however, this was not done. Further, I find it unlikely that the previous owner would have allowed the Tenants to put their sheds on the Land if it was meant to be a common area. I find it particularly unlikely that the previous owner would have allowed the Tenants to put their sheds on a common area without paying anything extra for this. At the very least, I would expect there to be some documentation of the previous owner making it clear to the Tenants that the Land was common area and not part of the site at the time the previous owner allowed the Tenants to put the sheds on the Land; however, there is no such documentation before me. I also note that the Tenants had used the Land for 30 years without being provided something in writing stating the Land was common area and not part of the site.

Given the site length goes from the front road to the back alley, the Tenants have exclusive possession of the Land subject only to the *Act* and the Landlord must comply with the *Act* in relation to the Land.

Compensation and rent reduction

The basis for compensation is set out in section 7 of the *Act* and RTB Policy Guideline 16. The basis for a rent reduction is set out in section 58 of the *Act*.

I decline to award the Tenants compensation or a rent reduction on the basis provided because I have found the Land is part of the site and therefore the Tenants have not experienced the loss claimed.

Further, I decline to award the Tenants compensation or a rent reduction for moving their sheds because the Tenants should have waited for the outcome of this hearing before moving them if they did not want to move them. In my view, the mitigation requirement meant the Tenants needed to wait for a determination about the site size.

I decline to award the Tenants compensation for a parking space they lost 16 years ago and find this request unreasonable. Clearly, the loss of the parking space did not have any real impact on the Tenants because they did not take issue with this for 16 years.

Conclusion

The site length goes from the front road to the back alley and the Tenants have exclusive possession of the Land subject only to the *Act* and the Landlord must comply with the *Act* in relation to the Land; the Application is granted in this regard. The remainder of the Application is dismissed without leave to re-apply.

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

Dated: March 01, 2023

Residential Tenancy Branch