



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, OC, FF

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and an order that the landlord comply with the Act. The hearing was held over two days and both parties participated on each day.

At the hearing the parties agreed to settle most of the issues that were the subject of this application on the following terms:

- The tenants will vacate the manufactured home site no later than July 1, 2010.
- The tenants and their guests will not park on the roadway in the park but may rent parking spaces in the RV area at a rate of \$25.00 per vehicle per month beginning on January 1, 2010. The tenants also may park their vehicles at other sites in designated parking areas provided they have the permission of the tenants of those sites and further provided that this does not cause those other tenants to exceed the limit of vehicles they are permitted to have on their site.
- Until January 1, 2010 the tenants may continue using the additional parking space they constructed in front of their home.
- The tenants may pay their rent through a money order sent to the landlord's post office box provided that the rent arrives in the box on or before the day it is due.

### Issues(s) to be Decided

One issue was not agreed upon by the parties and is left to be determined, that issue being whether the tenants are obligated to remove a garden area and fence which extend beyond the fences of their neighbours.

### Background and Evidence

The tenancy began approximately 3 ½ years ago when the manufactured home park was under different ownership. The park rules which were in place at the time the tenancy began and were binding upon the tenants state that “Removal or adding to the fencing, shrubs and trees on the site requires the prior written permission of the landlord.” The tenants testified that a previous owner gave them permission to plant apple trees and a garden and construct a fence. The tenants further testified that they and the previous landlord engaged in a discussion regarding the dimensions of the garden and that they had his full approval. The current landlord wishes to remove that part of the garden, fence and those apple trees that extend too far onto the roadway as he feels it creates a bottleneck on the road.

### Analysis

While I accept that the park rules in placed at the beginning of the tenancy were binding upon the tenants, it is clear to me that the previous landlord permitted the tenants to place their garden and fence where they did and chose not to insist on strict compliance with the park rules. I have arrived at this conclusion because there is no evidence before me that the previous landlord requested that the tenants remove or alter the garden. Rather, the tenants enjoyed their garden for a number of years until the current landlord determined that all tenants should strictly comply with the rules. While the previous landlord had the option of insisting on a strict compliance with the park rules, I find that he voluntarily chose not to do so and therefore the doctrine of waiver applies to prevent the current landlord from insisting on compliance with that rule. The landlord is therefore not entitled to remove the garden, fence or trees from the site and may not require that the tenants do so. I note, however, that the tenants may not make further alterations to the site without having the express permission of the landlord.

Conclusion

The tenants may retain their garden area and fence as it is. The parties have settled other issues on the terms outlined above. I find it appropriate that the parties share the cost of the filing fee paid to bring this application and accordingly permit the tenants to deduct \$25.00 from future rent owed to the landlord.

Dated: December 24, 2009

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