Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OLC, RP, LRE, RR, FF

Introduction

This hearing dealt with the tenant's application for the landlord to comply with the requirements of the Act, regulations or tenancy agreement; make repairs to the site or property; for conditions be set upon the landlord's right to enter the site; for authorization for a rent reduction for repairs, services or facilities not provided; and, recovery of the filing fee. Both parties appeared at the scheduled hearing times, including the reconvened hearing. Both parties were provided the opportunity to be heard and to respond to the other party's submissions.

The hearing of December 15, 2009 was approximately 1 hour and 45 minutes in duration and was reconvened for January 9, 2010 in order to hear all of the issues raised in this application.

The landlord presented the park manager as a witness during the December 15, 2009 hearing during which time the park manager provided testimony. The tenant was provided the opportunity to question the park manager and respond to the submissions of the park manager.

Issues(s) to be Decided

1. Is it necessary to issue Orders to the landlord for compliance with the Act, regulations or tenancy agreement?
2. Is it necessary to issue Orders to the landlord to make repairs to the site or property?

3. Is it necessary to set conditions or suspend the landlord's right to enter the rental site?
4. Is the tenant entitled to reduce rent for repairs, services or facilities not provided?
5. Award of the filing fee.

Background and Evidence

The parties provided undisputed evidence as follows. The month-to-month tenancy commenced in May 2008 and the tenant is required to pay rent of $425.00 on the 1st day of every month.

In making this application, the tenant raised seven issues for dispute resolution that I have summarized below, including the landlord's response to each issue.

Tenancy agreement

The tenant submitted that the landlord had not provided a copy of the original tenancy agreement signed by the tenant in May 2008. The tenant pointed out that on page 7 of the tenancy agreement there is a space provided for the tenant to initial that he has received a copy of the tenancy agreement, which in this case has not been initialled. The tenant explained that the landlord had not provided a copy of the tenancy agreement when it was signed because the photocopier was not working that day.

The landlord submitted that the tenant has been provided multiple copies of the tenancy agreement including a copy with the landlord's evidence package for this hearing, a copy from the landlord given in response to a request made by the tenant to the landlord's lawyer, and a copy delivered by the park manager shortly after the tenancy commenced. The park manager appeared at the hearing and testified that he had served the tenant with a copy of the tenancy agreement. The tenant denied receiving a copy of the tenancy agreement from the park manager but acknowledged that he did receive a copy of the tenancy agreement

from the landlord upon contacting the landlord's lawyer by way of a letter dated November 25, 2008. The tenant requested the original tenancy agreement be pulled from the landlord's records so that the tenant can initial receipt of the tenancy agreement in the space provided on page 7 of the tenancy agreement.

Contact information of business owners

The landlord is a limited company and the tenant seeks to obtain contact information of the company's directors. The tenant submitted that in the event of emergencies he must be able to contact the directors as the park manager has failed to respond to calls to the pager for 10 to 12 hours.

The landlord explained that there is a park manager and an assistant park manager. A pager is worn by the manager on duty. The landlord acknowledged that reception in the area is not great and there are occasional complaints of lack of reception. The landlord clarified that any documents to be served upon the landlord are to be deposited in the 24 hour drop box. The landlord also suggested that in the event tenants cannot reach the manager using the pager, tenants may contact the assistant manager at his site (B-5) and if the matter is an emergency the appropriate emergency services be contacted.

Rent cheques

The tenant submitted that he provides his rent cheques on time but that the landlord does not immediately cash the cheques and that rent cheques clear between the 2nd and 11th day of the month. The landlord explained that cheques are collected on the 1st day of the month, then the landlord's records are updated and the cheques are taken to the bank in the days that follow. The landlord verified that the tenant has not been issued any late fees which would indicate his rent has been considered on time.

Garden shed

The tenant submitted that he received verbal permission to construct a shed from the park manager in April 2009. The foundation was laid and in September 2009 construction commenced. On October 4, 2009 a notice to stop work on the shed was served upon the tenant. On October 9, 2009 the tenant provided the landlord with sketches of the shed on the site. The tenant received a letter from the landlord dated October 30, 2009 advising the tenant to remove the shed by November 15, 2009. The tenant acknowledged that construction of the roof on the shed continued after receiving notice to stop work in order to protect the shed. It was the tenant's submission that the current shed replaces an old shed and that other occupants of the park have been given verbal permission to construct improvements in the past.

The landlord submitted that requests for improvements need to be made in writing, as set out in the park rules and regulations, and that requests are approved by the landlord, not the park manager. The landlord explained that the construction of new structures have been suspended for the past two years due to waste water management. It was the landlord's position that the current shed is much larger than the old shed in height and the width of the roof.

The park manager was requested to appear during the hearing. Upon enquiry, the manager testified that he had verbally explained the process for obtaining approval for construction of the shed to the tenant but that he did not give verbal permission for the tenant to construct the shed. The manager confirmed that he does not have authority to grant such approvals and did not grant approval. Rather, the manager stated his role is to provide tenants with information on how to obtain approval for site improvements.

Fence location

The tenant submitted that a new fence has been installed at the same location as the old fence located on the property and the fence is between 7 – 14 feet from

the road. The tenant claimed that the park manager gave the tenant verbal permission to install the new fence. The tenant requested a decision be made with respect to the location of the fence.

The landlord submitted that the fence installed by the tenant is beyond the boundary of the site, that the fence is beyond the site boundary and impedes snow removal activities, and the tenant did not obtain prior written permission to install the fence.

I heard that after the December 15, 2009 hearing the parties met outside the rental site and attempted to establish the boundary of the site but the parties could not agree on where measurements should commence or end. The parties agreed to meet again on February 16, 2010 at 3:30 at the rental site for the purpose of establishing the site boundary.

Drainage and storm water management

The tenant submitted that the space beneath the manufactured home was very damp and the tenants attribute the dampness to water run off from the road and the lack of adequate ditches. The tenant explained that gravel laid on the road during winter has congested the drainage ditches and the lack of drainage has caused water to run down the driveway and under the manufactured home. The tenant stated that he requested action from the park manager but did not receive an adequate response so the tenant dug small trenches to catch the run off and the problem has improved. The tenant requested reimbursement of the cost to rent a saw to cut the concrete driveway.

The landlord submitted that there had been no previous complaints about water run off at that site and that other sites at lower areas do not experience water run off issues. The landlord was of the position that water under the manufactured home was likely attributable to a lack of proper gutters on the manufactured home. The landlord claimed that the tenant not requested the landlord attend the

site to inspect the accumulation of water. During the reconvened hearing, the landlord stated that the park manager has been monitoring water run off during heavy rainfall.

Contact from park manager

The tenant submitted that the park manager has been on his site without consent or without reason as permitted under the Act. The tenant described one occasion where the park manager was on the site shortly after the tree servicing took place in the park. The tenant described another time when the park manager came on the site to view the shed under construction during which time the park manager allegedly assaulted the tenant. The tenant acknowledged that he did not make a police report concerning the alleged assault and explained that he did not want to worsen the relations with the manager or landlord. The tenant claimed the park manager has been verbally aggressive to the tenant and his wife in the past and that more recently a bullet has been shot into the front window of the manufactured home.

The landlord testified that tenants were written given notice that the manager or contractors may be on the tenant's site during the tree servicing. The landlord testified that the manager has denied any assault or verbal abuse towards the tenant or the tenant's wife. The landlord explained that she has contacted the police to learn more about the shooting to which she was informed by the police that a report was made but that there is no ongoing investigation.

During the reconvened hearing, discussion ensued with respect to service of documents upon the tenant. I heard that most communication between the parties has been in writing. The use of registered mail was discussed but an agreement was not reached.

As evidence for the hearing, both parties provided various sketches of the manufactured home site and various correspondence between the parties. The landlord also provided

photographs of the manufactured home site and road allowance, other communications between the parties and statements from the manager and assistance manager. I have accepted and considered all of documentary evidence submitted by the parties in making this decision.

Analysis

Upon considering all of the oral and documentary evidence before me, I make the following findings.

Tenancy agreement

Section 13 of the Act requires that a tenant be provided with a copy of the tenancy agreement within 21 days of entering into the tenancy agreement. Section 16 of the Act provides that the rights and obligations of a landlord and tenant take effect from the date the tenancy agreement is entered into.

Upon hearing disputed testimony of the parties, I am uncertain as when or if the park manager served the tenancy agreement upon the tenant. However, based on undisputed evidence, I am satisfied that the tenant was provided with a copy of the tenancy agreement, including the park rules and regulations, by way of correspondence sent to the tenant by the landlord, dated December 5, 2008. This is further supported by a statement in the letter written by the tenant to the landlord's lawyer on December 15, 2008 in which the tenant states: "I finally received the park rules and a pad plan." In accordance with section 83 of the Act, I have determined that the tenant has been deemed to be in receipt of the tenancy agreement five days after it was mailed to the tenant. Therefore, I have determined that the tenant is deemed to be in receipt of the tenancy agreement, park rules and regulations, and site plan on December 10, 2008. I do not find it necessary to Order the landlord to provide another copy of the tenancy agreement or rules to the tenant.

Upon review of the tenancy agreement submitted as evidence, I am satisfied that the parties duly executed the tenancy agreement on May 15 and May 22, 2008 and that the tenancy agreement is valid and the rights and obligations of the parties commenced on May 22, 2008. I do not find the absence of the tenant's initials in the space that acknowledges receipt of the tenancy agreement invalidates the tenancy agreement. Therefore, I do not find it necessary to Order the landlord to pull the original copy of the tenancy agreement to have the tenant initial page 7 of the tenancy agreement. Rather, by way of this decision I have deemed the tenant to be in receipt of the tenancy agreement on December 10, 2008.

Contact information of business owners

Section 81 of the Act provides for ways a party may serve documents upon the other party. Section 81(f) provides that a copy of a document may be left in a mail box or mail slot at the address at which the landlord carries on business as a landlord. The tenant has been instructed to serve correspondence upon the landlord by leaving correspondence in the mail box provided by the landlord at the manufactured home park. I find this instruction satisfies the requirements of section 81(f). By virtue of section 83 of the Act, documents left in the landlord's mail box provided are deemed to be received by the landlord three days after the document is deposited in the mail box.

Section 27 of the Act deals with emergency repairs. Section 27(2) provides:

> (2) The landlord must post and maintain in a conspicuous place in the manufactured home park, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

Upon hearing from the parties, I am satisfied that the tenant has been provided the name and contact telephone number to use in the case of emergency repairs. The Act does not require the landlord to provide the names and telephone numbers of the directors of the company for this purpose. Rather, the landlord is at liberty to choose emergency contact person.

In the case of emergencies other than emergency repairs, the tenant should contact the appropriate emergency services available in the jurisdiction of the park.

In light of the above findings, I find the tenant is able to serve the landlord with documents by way of the mail box and the tenant has been provided emergency contact information. I do not find the landlord is obligated to provide the tenant with the name and telephone numbers of the corporate directors and I deny the tenant's request for this information.

Rent cheques

The Act requires the tenant to pay rent when due under the terms of the tenancy agreement. There is no provision in the Act or regulations that requires the landlord to cash the cheque with a certain amount of time. I find the landlord assured the tenant that his rent payments have not been considered late in the past and provided a reasonable explanation as to why there is a delay between the date the rent is due and the date the rent cheque clears the bank. I do not find a violation on part of the landlord and I do not make any Order to the landlord with respect to this matter.

Garden Shed

Having previously found the tenant has been provided a copy of the tenancy agreement and the park rules and regulations on December 10, 2008 I find the tenant was made aware of the park rules and regulations concerning site improvements in writing by the landlord. At issue is whether the park manager granted verbal permission to the tenant to construct a new shed.

Where verbal terms are clear and in situations where both the landlord and tenant agree, there is no reason why such terms can be enforced. That being said, it is evident that, in relying on memory alone, the parties may end up interpreting verbal terms in drastically different ways. Where certain issues and expectations are verbally established between the parties, these terms are always at risk of being perceived in a

subjective way by each individual. Obviously, by their nature, verbal terms are virtually impossible for a third party to interpret in order to resolve disputes as they arise. Then a Dispute Resolution Officer will have no choice but to base deliberations on provisions contained in the *Manufactured Home Park Tenancy Act*, Regulations and tenancy agreement by default and not on the purported verbal agreement.

I do not find the disputed testimony sufficient to establish that the park manager had given verbal permission to the tenant to construct the garden shed. I also find that the construction of the shed commenced after the tenant was in receipt of a copy of the tenancy agreement, including the park rules and regulations. Therefore, I find the tenant was obligated to comply with the terms of the tenancy agreement, including the park rules and regulations, with respect to gaining the landlord's written permission to construct the garden shed.

I accept the landlord's position that the waste water management is impacted by the construction or installation of impervious materials, including the area of a roof, and that those factors are reasonable in considering whether a structure will be approved. The parties are encouraged to reach a mutual agreement to this matter and that perhaps modification to the current shed may alleviate some concerns; however, ultimately, I find the landlord retains the right to require the shed to be removed if the landlord does not grant permission to the tenant for the garden shed.

Fence location

The parties provided different sketches of the rental site. The landlord's version of the site plan, dated June 24, 2002, includes the tenant's initials which are dated May 15, 2008 and provides for distances between the manufactured home and the site boundary lines. I find the landlord's site plan is the site plan for this site and is herein referred to as the site plan. Upon hearing from both parties, I make the following ORDERS upon both parties:

1. Both the tenant and the landlord are to meet at the rental property on February 16, 2010 at 3:30 p.m. for the purposes of taking measurements and establishing the site boundary lines and the location of the fence. The parties are at liberty to have an agent represent them or have a witness present.
2. The site plan dated June 24, 2002, including the measurements contained therein, is to be used to establish the site boundary lines.
3. I find the manufactured home is in the same location as when the site plan was drafted in June 24, 2002; thus, the first measurements to be taken are from the manufactured home to the boundary as established on the site plan. The distances from the edge of the road to the fence are not to be used for purposes of establishing the site boundary lines.
4. The tenant is not to impede or restrict the landlord's access to the rental site on this date for purposes of establishing the location of the site boundary and fence.

For clarity, I do not find it necessary for the landlord to obtain the tenant's agreement or consent with respect to the location of the site boundary. Ultimately, it is up to the landlord to establish the boundary that complies with the site plan. The purpose of having both parties attend the measurement of the site is to avoid future disputes between the parties with respect to this issue.

Only after the boundary has been established can it be determined whether the fence is within the site boundary. Therefore, at this point in time, I cannot determine whether the fence is within the boundary lines and I make no order concerning the fence at this time. The parties are at liberty to seek dispute resolution in the future should the location of the fence remains an issue.

Drainage and storm water management

Under section 26 of the Act, a landlord must maintain the manufactured home park in a reasonable state of repair and comply with housing, health and safety standards required by law. The tenant has acknowledged that the dampness under the manufactured home has improved. The tenant's letter to the park manager in August

2008 also refers to replacement of an insufficient gutter on the south side of the manufactured home and installation of a gutter on the north side of the manufactured home.

The photographs provided by the landlord appear to show gravel has accumulated on the road allowance which is consistent to what the tenant described; however, the photographs do not sufficiently depict the topography of the surrounding land. The landlord claims to be monitoring the situation when there is heavy rainfall.

As this is the tenant's application, the tenant has the burden to proof his claim against the landlord. The tenant also has an obligation to mitigate any damage or loss. I find that mitigating his loss would include requesting the landlord investigate water accumulation on the tenant's site. After hearing from both parties, I am uncertain as to whether the dampness was attributable to a lack of adequate gutters on the manufactured home or a lack of ditches, or the combination of both. Therefore, the tenant has not satisfied me that specific orders need to be issued to the landlord with respect to installing or clearing ditches.

Rather, I find it appropriate to make the following orders upon the parties. If the tenant observes water is running off the roadways and into the rental site, the tenant is ORDERED to contact the pager number provided by the landlord and upon receipt of such a call from the tenant the landlord is ORDERED to attend to the area identified by the tenant as soon as possible. The landlord is also ORDERED to continue periodically monitor the area during heavy rainfall. Where it is established that water is entering the rental site from the road, the landlord must ensure an adequate storm water management system, including ditches, are in place to prevent damage to the manufactured home and site.

With respect to the tenant's request to recover the cost of the concrete saw, I make the following findings. The Act provides that a tenant may recover the cost of emergency repairs; however, where a tenants takes it upon himself to make other repairs, the cost

of the repair is not recoverable unless the landlord authorizes such recovery. The Act defines an emergency repair under section 27(1) as

> (a) urgent,
>
> (b) necessary for the health or safety of anyone or for the preservation or use of property in the manufactured home park, and
>
> (c) made for the purpose of repairing
>
> (i) major leaks in pipes,
>
> (ii) damaged or blocked water or sewer pipes,
>
> (iii) the electrical systems, or
>
> (iv) in prescribed circumstances, the manufactured home site or the manufactured home park.

Having been provided evidence that the tenant's home inspector observed dampness under the manufactured home near the time the home was purchased by the tenant, it would appear that moisture had been an issue for some time. Therefore, rental of a saw in November 2008 would not appear to be in response to an urgent repair caused by a major leak in a pipe, damaged or blocked water or sewer pipes and this expenditure is not for an emergency repair as defined by the Act.

Contact with Park Manager

I found the disputed evidence concerning the park manager's behaviour towards the tenant did not sufficiently satisfy me that conditions need to be set on the landlord's right to enter the rental site. For clarity, use of the word landlord includes a landlord's agent and the park manager. Rather, I find it sufficient resolution to provide both parties with information on section 23 of the Act which provides for the landlord's restricted right to enter the manufactured home site. I have reproduced section 23 for the benefit of both parties.

Landlord's right to enter manufactured home site restricted

23 A landlord must not enter a manufactured home site that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord has an order of the director authorizing the entry;

(d) the tenant has abandoned the site;

(e) an emergency exists and the entry is necessary to protect life or property;

(f) the entry is for the purpose of collecting rent or giving or serving a document that under this Act must be given or served.

As explained to the parties during the hearing, the landlord, including the landlord's agent is permitted to enter the rental site for the purpose of serving documents. Where service of a document comes in dispute, the burden to prove a document was served is that of the party that served it. Upon hearing from the landlord, I am confident the landlord is aware of the requirements of section 81 of the Act and I do not make any specific order for service of documents in a different manner.

Filing fee

In light of the above findings, the tenant must bear the cost of the filing fee paid for this application.

Conclusion

The tenant's request for a copy of the tenancy agreement and contact information for the directors of the corporate landlord are dismissed. I have found the landlord's rent cashing practices are not in violation of the Act, regulations or tenancy agreement. I have found the landlord has the right to approve or withhold approval for site improvements and that the tenant did not establish that he had approval to construct the garden shed. The parties are ORDERED to meet at the rental site on February 16, 2010 at 3:30 p.m. for the purpose of establishing the site boundaries as set out in this decision. The location of the fence cannot be established at this time and the parties are at liberty to make subsequent application for dispute resolution if the parties cannot resolve future disputes concerning the fence. The tenant has been ORDERED to report water run off to the landlord upon observing any such run off and the landlord is ORDERED to respond to reports of run off from the tenant and to continue periodic monitoring of water run off in the vicinity of the tenant's site. The parties have been provided with the provision of the Act that provides for the landlord's restricted right to enter the rental site. The landlord, including the landlord's agents, must comply with this provision.

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

Dated: February 10, 2010.

Dispute Resolution Officer