Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

AMENDED DECISION

Dispute Codes MNDC, RR, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

A hearing with respect to the tenant's application was conducted by a Dispute Resolution Officer on July 19, 2011. The tenant did not attend the hearing, and the application was dismissed. The tenant applied for a review of that Decision, pursuant to Section 72 of the *Manufactured Home Park Tenancy Act*, which was dismissed on July 29, 2011. The tenant applied to the Supreme Court of British Columbia by way of Judicial Review Proceeding, which resulted in an order that the application be remitted back to the Residential Tenancy Branch in order for the director to reconsider another hearing on new evidence. This is the resulting Decision from that re-hearing.

The hearing did not conclude on the first scheduled date and was adjourned for a continuation of the testimony. The landlord and the tenant attended on both days of the hearing. Both parties also provided evidence in advance of the hearing to the Residential Tenancy Branch and to each other, and gave affirmed testimony. All of the evidence and the testimony have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement?
Is the tenant entitled to an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

This tenancy began about 22 years ago, being a rented lot in a manufactured home park, and the tenant still resides in a manufactured home on that lot. Rent in the amount of $344.00 per month is currently payable in advance on the 1st day of each month, and there are no rental arrears.

The tenant testified that when the tenant first moved into the park, all yards were different. The yards are not all rectangular in shape and the tenant was told that fences divided the lots. When the tenant moved there, a fence existed which the tenant used as a boarder for the rented lot. The tenant had asked the landlord for permission to plant lilacs and other bushes beside the old picket fence about 15 years ago, and the tenant was given permission and has always landscaped and maintained that space. The tenant installed curbing, bark-mulch and plants, and provided photographs of the yard. A manufactured home next door had been purchased, and the new neighbour replaced the fence with a cedar fence. The park is now under new management, who has now told the new tenant that the space belongs to the new neighbour.

The tenant further testified that the landlord is inconsistent; some people are allowed dogs and some are not. Also, parking is supposed to be limited to 2 vehicles per lot but some tenants have more than two. The landlord makes new rules as they go along and each tenant seems to have a different set of rules.

The tenant met the new neighbour, who rents the manufactured home to others, and the new neighbour told the tenant that the space belonged to the new neighbour. The tenant advised the new neighbour to talk to the manager of the park. Two days later the tenant was advised by the new neighbour that the manager had agreed that the space belonged to the new neighbour. When the tenant called the manager, the manager got mad and told the tenant he'd rip out the trees and bill the tenant for it.

The new neighbour put up the fence and the tenant no longer has access to that portion of the lot. It has not been maintained, and the new neighbour ripped up flowers, strawberries, raspberries and cedars that the tenant had planted, and dumped dirt and gravel in the bark-mulch that had been placed there by the tenant. The tenant can only access one side of the peach tree that the tenant planted as a result of the new fence.

The neighbour has rented out the manufactured home and the tenants removed a small fence that had been placed bordering a flower garden and replaced it with skulls. The manager only yells at the tenant and told the tenant that his job is only to collect rent.

The tenant also provided numerous type-written pages of explanation of the tenant's claims in addition to numerous letters from other witnesses who did not attend and were not subject to cross examination. Included in that documentation is a letter from an

ordained minister who provided a 3 hour lecture on the skills of Relationship Improvement with the congregation, and a receipt for 18 hours of telephone counselling, including 8 hours of office therapy time, which states that on July 22, 2011 the tenant paid an honorarium of $400.00.

The tenant claims $6,658.52 for compensation for damage and loss due to the landlord's breach of the tenancy agreement and provided numerous receipts, most of which do not indicate what items were purchased. The tenant provided a document outlining the specific claims as follows:

- $802.83 for filing, photocopies and serving documents;
- $400.00 for missed work;
- $150.00 to replace mulch;
- $70.00 for paper and ink cartridges;
- $200.00 for Pro video;
- $3,960 for loss of use and enjoyment;
- $400.00 for counselling services;
- $1,335.20 for replacement of cedars and plants;
- $4,000.00 for 20 years of maintenance;
- $300.00 for 1 peach tree, plus $30.00 for shipping and $40.00 for transplanting;
- $400.00 for 2 cedars over 16 feet high;
- $30.00 for irises;
- $10.00 for strawberries;
- $10.00 for raspberries;
- $45.90 for flux;
- $45.00 for pansies;
- $316.00 for lilacs.

The landlord testified that each manufactured home in the park has a different shaped lot. How the homes were parked was left up to the tenants and some have larger front yards and some have larger back yards. The tenant's lot is a total of about 4,000 square feet, or more, and the section that is the subject of the tenant's claim is about 100 square feet. The evidence package provided by the landlord states that the area in dispute is a triangle of an area of less than 100 square feet, or 14' X 14' and the tenant's pad is an area of more than 4,300 square feet, or 54' X 80', and the dispute portion is 2% the size of the tenant's pad. The landlord agrees that the tenant's space was divided by the fence when the tenant moved in, although the landlord took over as

manager in 1993 or 1995, at which time there was no requirement about defining lot space in a manufactured home park.

The landlord also testified to attending the Supreme Court Judicial Review Hearing and the Court ordered a review of the previous hearing, not a new hearing. Further, since the tenant did not attend the hearing on July 19, 2011, any expenses of the tenant claimed subsequent to that date should not be considered.

The landlord also provided a diagram of the fence and the two manufactured homes to illustrate their positioning, which was agreed by the tenant as a correct illustration. The fence does not separate the two homes, but is situated along the back of the homes separating their lots from the lots of manufactured homes behind the subject lots. The old fence was slightly diagonal and situated in such a fashion that the tenant's neighbour could not access the back yard of the neighbour's lot, but was easily accessible to the tenant's lot. The new fence that has been erected is also slightly diagonal and allows the neighbour access to the back yard, although the space between the fence and the back of the neighbour's home is relatively small.

The manager of the manufactured home park at the time that the tenant moved into the park is now deceased. The landlord testified that the tenant signed a tenancy agreement at the commencement of the tenancy, and the practice at that time was to remove the signature strip from the contract as evidence that the landlord had a signed tenancy agreement and the tenant would be permitted to keep the remainder of the contract as a copy of rules for the park. The tenant was given a new contract to sign in 2004 in the same terms, but the tenant did not sign it. The new contract included dimensions of the lot. Copies of both versions were provided for the hearing, and the landlord also provided a copy of the tenancy agreement of the tenant's neighbour, which commenced on February 1, 2011. That agreement specifies that the tenant's neighbouring pad is "...bordered on the front by the east road, the back is bordered by the hydro lines, the side borders of the pad will be from the north side of the trailer up to the north side of the neighbouring trailer #19. The trailer pad has on minimum area of 800 square feet." The old tenancy agreement and the new tenancy agreement both specify that all fences erected must be approved by the landlord.

The landlord also provided letters from other tenants to discredit the tenant, and a letter from the service provider who erected the new fence. The letter from the service provider states that the fence was erected on June 10, 2011.

Analysis

With respect to the landlord's testimony that the Supreme Court of British Columbia did not order a new hearing, but ordered a review on new evidence, I have reviewed the orders made by that Court. The first order was entered in the Kamloops Registry on October 5, 2011 and states that the order was made on October 2, 2011 before Master McDiarmid. The body of the order states: "This Court Orders that: 1. Will remit back to Residential Tenancy Branch in order for them to reconsider another hearing on new evidence; 2. (Landlord) should be at liberty to make submissions at the hearing; 3. Signature of (Landlord) dispensed with; 4. RTB hearing not to be heard before end of Nov 2011; 5. No costs ordered." Another order was entered by the Kamloops Registry on December 20, 2011 which states that the application was heard before a Judge of the Court. The body of the order states: "The Order of October 3, 2011 is hereby amended to remove 'Before Master McDiarmid' and replace with 'Before the Honourable Justice Powers." I find that the director did consider another hearing, and scheduled a new hearing to be conducted based on new evidence, and that the landlord was notified of the new hearing and was provided with an opportunity to cross examine the tenant, make submissions, give affirmed testimony and provide evidence. I further find that the scheduling of this hearing was done in accordance with the order of the Supreme Court of British Columbia.

I have also reviewed the evidence provided by the parties, and find that the landlord's interpretation of the size of the tenant's pad and the size of the disputed portion of property is not consistent with the testimony of the landlord. The landlord testified that the tenant's pad is about 4,000 square feet and provided an evidence document indicating that the pad is more than 4,300 square feet, or 54' X 80'. My calculations indicate that an area of that size is 4,320 square feet, however the landlord also testified that the area in dispute is less than 100 square feet but indicate in the evidence package that the area is 14' X 14'', which calculates to ~~196 square feet, being almost double the amount that the landlord testified to~~ 98 square feet for a triangle area.

The *Manufactured Home Park Tenancy Act* states that:

> **14** (2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

The *Act* also states that:

> **16** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the manufactured home site.

Further,

> **21** (1) A landlord must not terminate or restrict a service or facility if
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> (a) the service or facility is essential to the tenant's use of the manufactured home site as a site for a manufactured home, or
> (b) providing the service or facility is a material term of the tenancy agreement.
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> (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
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> (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
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> (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Although I do not find that the loss of the space is essential to the tenant's use of the site as a site for a manufactured home, or that the space is a material term of the tenancy agreement, I do find that the space was space offered to and used by the tenant as part of the tenancy agreement entered into at the commencement of the tenancy. The landlord may not reduce the space without written notice and must compensate the tenant by way of a rent reduction an equivalent amount to the value of that space.

The landlord provided a letter from the service provider who built the fence which states that the fence was erected on June 10, 2011. The tenant did not provide the date in testimony, however, I accept that portion of the service provider's evidence.

I also accept the evidence of the landlord that the size of the tenant's pad is 4,320 square feet and the area in dispute is ~~196~~ 98 square feet, which equates to about ~~4.55%~~ 2.27%, and I find that the tenant is entitled to a reduction in rent by that amount from June 10, 2011. The tenant is entitled to a rent reduction of ~~$15.65~~ $7.80 per month in addition to a retroactive reduction from June 10, 2011 to March 31, 2012, for a total of ~~$151.28~~ $75.40.

With respect to the tenant's claims for replacement of shrubs, plants and other improvements made by the tenant, I find that the tenant has failed to prove any of those amounts by way of reliable evidence, and therefore cannot be successful. The tenant provided an invoice for spraying trees in the amount of $536.00, however that invoice is

not dated and I have no way of determining whether or not the service was provided before or after the date the new fence was erected. The tenant also provided invoices for pruning in the amounts of $768.32 and $246.96, however the dates on those invoices are October 21, 2011 and September 13, 2011 respectively, which are both well after the space was re-assigned to the neighbour. The tenant did not testify that those amounts were paid for shrubs or trees on the disputed space, and I find that the tenant has failed to establish that the landlord is responsible for those amounts.

With respect to the tenant's claim in the amount of $802.83 for filing, photocopies and serving documents to the landlord, those amounts are not recoverable under the *Act,* and are hereby dismissed. Further, the tenant's claims in the amount of $70.00 for paper and ink cartridges and $200.00 for video are not recoverable under the *Act,* and are hereby dismissed.

With respect to the tenant's claim in the amount of $3,960.00 for loss of use and enjoyment, I find that the tenant has failed to establish such liability from the landlord and that claim is hereby dismissed. Both parties provided written evidence from outside sources of the difficulties each other has encountered when dealing with issues, however none of those witnesses was available for cross examination. In the absence of such questioning, I must determine what weight to apply to those letters, and I find that little weight can be applied because each party has provided similar evidence against the other.

With respect to the tenant's claim in the amount of $400.00 for counselling, I find that the tenant has failed to prove that the landlord is responsible and that claim is hereby dismissed.

With respect to the tenant's claim in the amount of $400.00 for missed work, I find that the tenant has failed to establish any amount or that the landlord is responsible for a loss in wages, and that claim is hereby dismissed.

With respect to the tenant's claim in the amount of $4,000.00 for 20 years of maintenance, I find that the tenant enjoyed the use of the space in dispute for many years and has not suffered a loss prior to the erection of the new fence, and therefore that claim must also be dismissed.

With respect to the landlord's testimony that any claim made by the tenant subsequent to the July 19, 2011 hearing ought not to be considered, I find that the tenant is entitled to a claim for damages for the duration of the tenancy from the date that the fence was erected which resulted in a loss of the space rented by the tenant.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the $100.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord, pursuant to Section 60 of the *Manufactured Home Park Tenancy Act* in the amount of ~~$251.28~~ $175.40. This amount may be deducted from a future month of rent payable or otherwise recovered.

I further order that the rental amount be reduced from $344.00 per month to ~~$328.35~~ $336.20 per month, pursuant to Section 58 (1) (f) of the *Manufactured Home Park Tenancy Act.*

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: March 22, 2012.

Residential Tenancy Branch