Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SPECTACLE LAKE HOME PARK (1989) LTD.
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes: OLC, RP, PSF, RR, FF, O

Introduction

This Dispute Resolution hearing was convened to deal with joined applications by the tenants seeking:

- to force the landlord to comply with the Act,
- an order to force the landlord to make repairs to the site, property,
- an order to force the landlord to provide services and facilities required by law,
- an order to allow the tenant to reduce rent for repairs, services and facilities agreed upon but not provided, and
- an order to reimburse the tenants for the cost of the applications.

Issues to be Decided

Should the landlord be ordered to comply with the Act, make repairs to the site and property and to provide services and facilities required by law?

Are the tenants entitled to a retro-active and ongoing rent abatement for devalued tenancy and the landlord's failure to comply with the Act?

Preliminary Matter

At the outset of the hearing the agent for five of the seven joined applicants to be heard during these proceedings, stated that they wanted to "*challenge the landlord's evidence*", immediately.

I informed the agent that because the hearing was convened to deal with the applications and claims of the applicant tenants, any challenge of the respondent landlord's evidence would only take place ***after*** the tenants had identified the details of their dispute and presented their case. Then, after the landlord presented their evidence, the tenants would have the opportunity to challenge the landlord's submissions.

The hearing continued for approximately 90 minutes and, once all of the testimony and evidence was presented and concluded by the parties, the agent again raised the issue that they wished to "*challenge the landlord's evidence*". When asked to clarify the meaning of this request, the agent representing five of the applicants stated that they objected to the fact that there were two other applicants who had wrongfully been permitted to have their applications joined and heard in conjunction with the rest.

The agent persisted in objecting to the participation of the two individuals apparently on the basis that their tenancy agreements contained some terms that the agent felt should set them apart and should rightfully prohibit them from making a joint application.

The agent stated that the hearing process was contaminated because his original objection made at the commencement of the hearing, when he stated they wanted to "*challenge the landlord's evidence*", was completely disregarded by the arbitrator, who the agent felt merely ignored this important request.

The agent pointed out that because they were not permitted to present evidence on the issue of severing applications *before* the hearing had fully started, he and the applicants he represented were unfairly prejudiced.

The agent then requested that I hear their arguments and consider their evidence with respect to their request to exclude or sever these other two applicants' dispute resolution files. The agent wanted to present evidentiary material that would justify excluding them from the joint proceedings and instead schedule these two applicant's applications separately and not to be heard in conjunction with the other 5 applications.

I declined this request to consider evidence to support excluding the two participants in question because it was too late, given that the hearing was almost concluded.

I did not interpret the agent's initial request to be allowed to "*challenge" the landlord's evidence*" to actually mean that this agent was lodging an objection about who was allowed to participate in the hearing as joined applicants. I did not realize that the agent was demanding that certain individuals should be excluded from the proceedings at that time as his request was not clear on this point.

Unfortunately, once this serious concern was finally clarified, I had already made several determinations with respect to the joined dispute resolution applications before me and I had also heard evidence from the two participants that were the focus of the agent's objections.

I find that the agent, having raised their concern as a natural justice matter, must be assured that it is of utmost importance in a quasi-judicial process that justice be seen to be done, to the satisfaction of both applicants and respondents.

I find it is not possible to consider excluding any individual participants from a hearing that has already been held, and whose testimony has already been heard. For this reason, in the interest of administrative fairness, I feel there is no choice but to dismiss all these applications with leave to reapply.

All of the applicants are at liberty to reapply jointly or separately as they wish.

Any controversy that may arise over who is permitted to join the application, should be properly dealt with at the outset of a hearing, before the merits of the dispute can be heard without a perception that the fairness of the process has been compromised.

Conclusion

The tenant's joint applications seeking orders against the landlord to comply with the Manufactured Home Park Tenancy Act by making repairs and providing services and facilities required by law are dismissed with leave to reapply, due to administrative fairness concerns about the proceedings.

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: November 27, 2013

Residential Tenancy Branch