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, MNDC, LRE, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to have the landlord comply with the Act, regulation, or tenancy agreement, to suspend or set conditions on the landlord's right to enter the rental site, and to recover the cost of the filing fee from the landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing

Preliminary issue

The parties confirmed receipt of all evidence submissions. The tenant's evidence was filed late; however, the landlord had no issues with the tenant's evidence and agreed the evidence could be included at today's hearing.

The tenant WG, objected to the landlord's evidence; however, the evidence was filed in accordance with the Residential Tenancy Branch Rules of Procedure; the tenants were informed that if the landlord presents evidence during the course of the hearing then they can make that objection at the time.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Are the tenants entitled to a monetary order for money owed or compensation?

Should the landlord be ordered to comply with the Act, or regulation?
Should the landlord's right to the rental unit, be suspended or conditions set?

Background and Evidence

The tenancy began on October 1, 2004.

The tenant WG, testified that they seek to be awarded aggravated damages in the amount of $5,000.00 per person, as a result of an incident that occurred on December 21, 2013, in which the landlord forced entry onto the rental site, with five people and a police escort. The tenant stated the police officer was very aggressive in his manner and he had his hand on his gun.

The tenant WG, testified after he spoke with the officer he allowed the landlord access the property under extreme duress and he alleged this was a trespass. The tenant stated this forced entry has adversely impacted their health and they were advised by their physician to distance themselves temporarily from the situation and on that instruction they went to Ottawa from January 9, 2014 to January 28, 2014.

Submitted as evidence are two letter dated December 30, 2013, from the tenants family physician, both letters indicated that they have medical problems that are being aggravated by a stressful situation that the tenants are being involved in and both would likely benefit from being away from this stressful situation if possible.

The tenant WG, testified that he acted as agent for joint applications for dispute resolution to have the landlord make repairs. The tenant stated that matter was heard on November 17, 2013, and the arbitrator made orders at the hearing. Filed in evidence is a copy of the decision made on November 17, 2013.

The tenant WG, testified that they have granted the landlord repeated access to the site on July 31, 2013, August 16, 2013, and October 6, 2013. The tenant stated the landlord has fully inspected the site and as they were in Ottawa from July 27 – September 5, 2013, their neighbor observed the inspection of August 16, 2013, from across the street.

The tenant WG, testified the property was fully inspected and there could be no possible reason for any further inspections after August 2013.

The tenant WG, testified that all the other residents in the park received a notice of a site inspection that was to occur on November 17, 2013, except he did not receive one. The tenant stated because of that he posted a notice that the landlord was not allowed

to access the site. The tenant stated the landlord did not enter the site and remained on the roadway and took a picture of his posted notice.

The tenant WG, testified that he received a notice of a site inspection that was to occur on November 23 and 24, 2013 and he denied the landlord access.

The tenant WG, testified that he received a notice of a site inspection that was to occur on December 14-16, 2013, and again he denied the landlord access.

The tenant WG, testified he received another notice that a site inspection was to occur on December 21 and 22, 2013 and he roped off the property to refuse entry. The tenant stated this is when the police officer intruded and he had no option but to allow access under duress and that he had to stand by and watch it happen.

The landlord's agent testified that since September the tenants have applied for various repairs, such as driveway repairs, tree cutting, and water runoff problems. The agent stated the tenant is interfering with the landlord's rights to have the sites inspected.

The landlord's agent testified that on October 30, 2013, she received a letter from the tenants indicating several matters of concern and she was merely attempting to address those concerns as well as other concerns related to the other application. Filed in evidence is a copy of the letter.

The letter of October 30, 2013, sent by the tenant, in part reads,

> "... I wish to follow-up on several matters of concern with you....
>
> We do not wish to seek assistance from the Health Ministry, Health Protection officials concerning the septic tank repairs done by the Park staff...
>
> We suggest that you arrange for the inspection & certification of the work completed with an appropriate qualified "authorized person...
>
> Your arborist and his crew did complete work on the North-East corner of our lot but other areas (trees marked for cutting or pruning) were unaddressed..."
>
> [Reproduced as written]

The landlord's agent testified that the tenant kept refusing her access to the rental site and due to an earlier incident with the tenant on another site; they had the police attend

with them on December 21, 2013, to ensure the public peace. The agent stated that after the police officer spoke to the tenant, the arborist, the civil engineer and she were allowed to access the site.

The landlord's agent testified that she is not responsible to pay the tenants trip to Ottawa as they have a second home there. The agent pointed out that the letter from their doctor letter is dated December 30, 2013 and their trip was book on November 26, 2013, and therefore, it would be unreasonable to pay for their preplanned trip.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the tenants have the burden of proof to prove a violation of the Act by the landlord and a corresponding loss.

Where a notice to enter the site is given that meets the time and other requirements set out in the Act, but entry is not for a "reasonable purpose", the tenant may deny the landlord access. Under section 23 of the Act a landlord is entitled to inspect the site on a monthly basis.

In this case the tenants have an outstanding application filed which seeks orders for the landlord to make repairs to roadways, driveways, water services, sceptic tanks, tree removal and drainage.

While the tenant alleged the rental site was fully inspected in August of 2013, and no further site inspection was required to occur, that is not a decision for the tenants to

make. The landlord has the right to conduct business as they see appropriate and make decisions based on information that they may be receiving from experts or other trades, and there is no entitlement to the tenant to know that information.

On October 30, 2013, the tenants sent the landlord a letter informing them of several concerns.

The tenants received Notices to Enter Site, which stated the purpose of the site inspection was to assess the tenants' concerns regarding the driveway and fence, trees and site drainage etc.

The tenants denied the landlord access to the site on November 17, 2013, November 23-24, 2013 and December 14-16, after they received proper notice to enter the site. Although I note the tenant denied that they received notice for November 17, 2013.

The tenants received a further notice from the landlord that they would be attending the site on December 21-22, 2013; however, the tenants had roped off the property denying access yet again. After the tenant WG spoke with the police officer he felt he had no option but to allow the landlord entry to the property, and the arborist and civil engineer attended at that time too.

In this case, I find the tenants are not cooperating with the landlord and have denied the landlord access to the site since November 2013, and only after the tenants were spoken to by the police officer they allowed the landlord's agent and the accompany parties access. I find the landlord was there for a "reasonable purpose". I find the tenants interfered with the landlord's lawful right or interest in the property.

Even if the landlord did not have the arborist or the civil engineer at that inspection, the landlord is entitled to inspect the site each month under the Act. Therefore, I find the tenants have failed to prove the landlord has violated the Act.

I find any stress that was caused to the tenants was a result of their own actions, as the tenants have been acting as agent for multiple tenants taking on far more responsibility than what is required and is not solely specific to their own tenancy.

Further, I find the tenants' actions of denying access and roping off the rental site, made the situation escalate and created far more stress than what was necessary. Especially when the landlord is only acting on requests for repairs that were made by the tenants and these repairs are for their own benefit. A party who claims for repairs or damages

has a legal obligation to do whatever is reasonable to accommodate the landlord's lawful right to address those concerns and not erect barriers to interfere with that right.

The tenants are cautioned that interfering with the landlord's lawful right or interest in the property may be grounds to end the tenancy for cause under section 40 of the Act. I note this decision may be used at any future hearing as evidence of the tenants having been cautioned.

As I have found the landlord has not violated the Act, I find the tenants are not entitled to compensation under the Act, and it is not necessary to order the landlord to comply with the Act, or suspend or set condition on the landlord's right to enter the site.

In light of the above, the tenants' application is dismissed without leave to reapply. The tenants are not entitled to recover the cost of the filing fee from the landlord.

Conclusion

The tenants' application is dismissed.

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: February 24, 2014

Residential Tenancy Branch