Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RP, PSF, RR, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Manufactured Home Park Tenancy Act* (the "Act") for Orders as follows:

1. An Order for the Landlord's compliance – Section 55;
2. An Order for repairs to the unit – Section 26;
3. An Order to provide services or facilities required by law – Section 58;
4. An Order for a rent reduction – Section 58; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under affirmation.

Issue(s) to be Decided

Is the Tenant entitled to the orders claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started in May 2010. The Parties signed a second tenancy agreement on October 24, 2012 for an ongoing month to month tenancy. Rent of $426.00 is payable monthly on the first day of each month. The tenancy agreement permits pets "subject to the landlord's approval and current Park Rules".

The Tenant states that previously to and at the time of signing the agreement the Tenant was able to use the park property to easily access the adjoining public beach with her dog. The Tenant submits that the ability to have easy access to the beach with her pet was one of the main reasons they choose the home park. The Tenant states that the Landlord breached this tenancy provision by restricting that easy access to tenants with dogs. The Tenant submits that the alternative routes to the beach are long and arduous for an elderly person with mobility challenges. The Tenant requests that the Landlord remove the sign prohibiting her access to the beach with her pet.

The Landlord states that the rules at the time of signing the agreement were silent on dog access to the beach and agrees that the Tenant's dog was allowed access at the time. The Landlord argues that the use of the term "current" in relation to the Park Rules as contained in the tenancy agreement means the rules that are current at any given time. Further the Landlord states that the rule restricting dogs access to the beach were passed unanimously on October 23, 2012 and are immediately effective under the Regulations and that as such it applies to the tenancy agreement signed by the Tenant. The Landlord states that the Rule was put into place to stop the occurrences of dog poop being left on the beach.

The Tenant states that while the rules may have been approved in October 2012, there was no notice of the change until mailed to the Tenant in December 2012. The Tenant further argues that the rules only become effective after a two week notice period. The Tenant submits that the appearance of goose poop on the beach will increase with the absence of the dogs and that the act of the Landlord does nothing to ensure the health safety of the beach from poop.

The Tenant states that the tenancy agreement provides for water and that since January 31, 2014 the Landlord has failed to provide potable water to her unit. The Tenant states that on this date a "boil water" advisory was given to the tenant and while there is no suggestion that the Landlord caused the advisory to be given, the Tenant argues that the Landlord has been negligent in not obtaining a required treatment

system. The Tenant states that the Landlord's water provision system is not in compliance and that the Landlord is required to obtain a proper treatment system. The Tenant states that 4 ½ years ago the Landlord informed the tenants that the park would be connected to the city water system but that the Landlord wanted the tenants to pay for the costs. The Tenant states that had the Landlord connected to the new system there would be no water advisory. The Tenant states that since the advisory the Tenant has been using filtered and boiled tap water. The Tenant provided a copy of a letter from a health agency that notifies the residents of the Park that the Park water system is out of compliance, that the lack of water treatment to manage the risk from using surface water has contributed to the advisory and that costly upgrades would be necessary. The Tenant claims a rent reduction retroactive to the start of the advisory and continuing until the Landlord provides drinkable water. The Tenant states that application in relation to repairs and the provision of services are in relation to the water system and the provision of drinking water.

The Landlord states that he did intend to connect to the new system last year and made proposals to the tenants on cost sharing. The Landlord state that these proposals fell through so the Landlord put the plans on hold until this year. The Landlord states that connections to a new system cannot occur during the winter and that financing was arranged this winter. The Landlord states that the process to connect has since started and that the water from the new system will be provided by July 2013, pending timely approvals from government agencies. The Landlord states that the present system was determined to be out of compliance due to regulation changes 6 to 8 years ago, that all small and some larger water systems were also out of compliance due to the regulation changes, and that no system was available to the park until now. The Landlord states that the water is potable, has been drinkable throughout the advisory and that the advisory was a precaution only. The Landlord states that the advisory came as a result of turbidity in the lake that the water is drawn from, that this is a natural occurrence and that connecting to a new system will not change those occurrences.

The Tenant states that the current system is drawing from the surface water that contains a higher pathogen count and that the advisory is not because of turbidity. The Landlord states that they regularly maintain the system and carry out inspections including weekly test sampling for pathogens. The Landlord states that the tests have not failed to date.

Finally the Tenant seeks clarification on how rules are made, changed and implemented and whether the Landlord can increase their rent in the future to cover costs of the new water system. The Landlord states that the Act and Regulations are followed in relation to rules and refers to Regulation sections 30 and 31 in particular.

Analysis

Section 30 of the Manufactured Home Park Tenancy Regulation (the "Regulation") provides that a the park committee or, if there is no park committee, the landlord, may establish, change or repeal a rule if it is reasonable in the circumstances and if the rule has the one of the effect, inter alia, of regulating pets in common areas. This section further provides that such a rule is enforceable against a tenant only if, inter alia, the rule does not change a material term of the tenancy agreement. Section 29 of the Regulation provides that subsequent to a tenant's entering into a tenancy agreement with a landlord, the landlord must give notice in writing to that tenant of any rule at least two weeks before the rule becomes effective.

Without determining whether the process followed by the Landlord to make the rule regulating pets in the common areas was done in accordance with the Regulations, given the Tenants evidence of age and mobility and considering that the Landlord made no submissions or gave any evidence on this point, I accept that easy access to the beach with her dog was a main reason for the Tenant choosing to reside at the Park and that the Tenant has substantiated on a balance of probabilities that this easy access is a material term of the tenancy agreement. I find therefore that the rule prohibiting the Tenant's easy access to the beach with her dog to be a breach of a material term of the tenancy agreement and that as a result the Rule has no effect as it

relates the Tenant. As there is no authority under the Act to consider whether the sign restricting other tenants and their pets is also ineffective I decline to order the Landlord to remove the sign.

As noted in the hearing, the dispute resolution process is not a process to advise Parties on the application of the Act and Regulations nor is there any authority to determine possible future events. I may only make determinations on whether a party has acted contrary to the Act or Regulations. I would encourage the Tenant to seek any further information required on the procedures to be followed for rule changes or rent increases from the Residential Tenancy Branch or other sources.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Given the letter from the health authority I find that the Tenant has shown on a balance of probabilities that the Landlord has contributed to the advisory by not having a water system in compliance with regulations. I also accept the Landlord's evidence that significant time and money is required to make the changes to the water system and accept that this could not be resolved quickly. I find that the matter became more urgent once the advisory was in place however I accept that the Landlord's timeline for the change by July 2014 is reasonable under the circumstances and that the Landlord has not been negligent. I therefore dismiss the Tenant's claim for a rent reduction with leave to reapply should the Landlord's system continue to contribute to a boil water advisory past July 31, 2014 and should the Landlord not have any reasonable basis for a further delay.

As the Tenant has been partially successful with its claim I find that the Tenant is entitled to recovery of the $50.00 filing fee and I order the Tenant to reduce future rent payable by this amount.

Conclusion

I order the Landlord to cease restricting the Tenant from using the easy access to the beach with her dog.

I order the Tenant to reduce future rent payable by $50.00 in full satisfaction of the claims.

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: June 11, 2014

Residential Tenancy Branch