



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Summerland Beach RV & Campground Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order of possession of the manufactured home site; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

Both tenants and an agent for the landlord company attended the hearing. The landlord's agent did not testify, however the landlord called one witness who gave affirmed testimony. One of the tenants also gave affirmed testimony. The landlord's agent was given the opportunity to cross examine the tenant, and the tenants were given the opportunity to cross examine the landlord's witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

At the outset of the hearing, the landlord's agent applied to adjourn this hearing generally stating a court case is pending in the Supreme Civil Courts. One of the issues respecting that matter is whether or not the Residential Tenancy Branch has jurisdiction. The tenant replied that the tenants have not been served with any documentation respecting that matter and stated that a hearing was heard previously by the Residential Tenancy Branch in 2012 under file number 784442. In that case the tenants had applied for an order cancelling a notice to end tenancy issued by the landlord because the tenants' employment with the landlord had ended. The director found that the parties have a tenancy agreement, and the tenants' application today is for a monetary order and for a finding that part of the manufactured home site is a material term of the tenancy and that the tenants are entitled to compensation for that loss.

Ultimately, the parties agreed that the hearing today would focus only on the tenants' application for monetary compensation respecting trees in the manufactured home park

and the balance of the tenants' application is dismissed with leave to reapply pending the outcome of the Supreme Court Hearing, by consent.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for recovery of a fee paid to the landlord for tree removal on another tenant's manufactured home site?

Background and Evidence

The tenant testified that this tenancy began in 1992 as a seasonal rental from April to October each year. The tenants do not have a tenancy agreement for November to March each year because the manufactured home is not winterized. The trailer stays in the manufactured home park, but the tenants pay rent annually on the 1st of January each year. The rent is subject to increases, and the tenants paid \$2,449.68 for 2014. A copy of the tenancy agreement has been provided.

The tenant further testified that there was a fire in the park and the landlord's agent had a meeting with tenants and the tenants were told that the trees on each individual site could be removed but were the responsibility of the tenants and that the landlord was only responsible for those on common property. After the meeting the tenants cut down 2 trees that they didn't want. Another tenant in the park approached the tenants asking if they knew someone who could cut down 2 trees on her site. The tenants got ahold of a fellow, who cut the trees down. At least a month later, the tenants received an email from the landlord's agent stating that due to damages to park property and the blatant disregard of the current rules, the landlord wants \$2,635.50 by December 10, 2013 or the tenants would be evicted. Included was a copy of a quote from an arborist and shows the subject address as the tenants' address, not the address where the trees were cut. The tenants paid the amount by the due date to avoid eviction. Copies of the email and the quote have been provided. The email is dated November 17, 2013 and the quote is dated November 16, 2013.

On December 9, 2013 the tenant sent an email to the landlord's park manager asking when office hours were and received a reply that he was in Mexico and the parties arranged to meet after New Years. The tenants asked to meet with the owner as well, but did not receive a reply, and the meeting never happened. The tenant also testified that the owner told tenants that trees could be cut at their own expense; the tenants' trees were cut down and so were other tenants with no repercussions at all.

The landlord's witness is the park manager and testified that the tenant in the site that the bill referred to had asked the witness to cut the trees down. The witness refused to do so because they were healthy. He also testified that that tenants paid for the trees to be cut as a Christmas gift for the lady who resided on the site where the trees were cut, and therefore the tenants are responsible. He further stated that it's not up to tenant to cut down trees and that he can't let people make a decision to cut down trees in the park.

The witness further testified that none of the work on the quote provided to the tenants has been done, and the tenants only want the money back because the trees weren't replaced. The landlord didn't do any of the work, only took the money. The tenants did the damage so they are responsible.

The witness also testified that he started working for the landlord about 2 years ago which was after the meeting that the tenant testified to, so the witness has no knowledge of that meeting. However, a paragraph of the tenancy agreement, a copy of which has been provided states: "PROTECTION OF VEGETATION: The cutting, removal or trimming of trees or any other vegetation greater than two (2) inches in diameter with the Park is prohibited without the written permission of Management."

Analysis

I have reviewed the email and the quote provided by the tenants, and I find that the landlord issued the email demanding payment of \$2,635.50 by December 10, 2013 on pain of eviction. The email also refers to the Manufactured Home Site Tenancy Agreement, and therefore, I find that the *Manufactured Home Park Tenancy Act* applies.

If the tenants had not paid the amount, in order to recover it the landlord would be required to establish that the amount is recoverable under the *Manufactured Home Park Tenancy Act* and that the amount is out-of-pocket expenses incurred by the landlord. In this case, the landlord has not done any of the work mentioned in the quote and a year has gone by. The landlord has not established that the work on the quote will ever be done, but simply wants to be paid the amount stated in the quote whether or not the landlord ever pays that amount or any amount. Further, I find that the amount paid by the tenants to the landlord is not recoverable by the landlord as against those tenants because they do not occupy that manufactured home site.

Also, the landlord's agent did not testify and the landlord's witness was not able to provide any testimony with respect to the tenants' testimony that the landlord's agent told the tenants they could cut down trees at their own expense.

In the evidence, I am not satisfied that the landlord has received money the landlord was entitled to receive under the *Act*, and the tenants have established a claim in the amount of \$2,635.50.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order I favour of the tenants as against the landlord pursuant to Section 67 of the *Manufactured Home Park Tenancy Act* in the amount of \$2,685.50.

The balance of the tenants' application is hereby dismissed with leave to reapply.

This order is final and binding and may be enforced.

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 28, 2014

Residential Tenancy Branch

