Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sharman Mobile Home Park (Dallas Estates)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O, FF

Introduction

This hearing was convened as the result of the tenants' application for dispute resolution under the Manufactured Home Park Tenancy Act (the "Act"). The tenants' application marked that they were apply for "other" relief under the Act and for recovery of the filing fee paid for this application.

The tenants the landlord's legal counsel, and the landlord's witnesses attended, the hearing process was explained and the parties were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. The landlord's witnesses were excluded from the hearing until their testimony was required.

Thereafter all participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to relief under the Act and to recovery of the filing fee paid for this application?

Background and Evidence

The tenants began their tenancy in the manufactured home park in or about October 2008. Into evidence, the landlord submitted a written tenancy agreement and the park rules in effect at that time were submitted.

Although not clearly set out by the tenants what section of the Act under which they were seeking relief, the evidence showed that the tenants requested to have one of the park rules declared void and unenforceable as it applies to them. In other words, the tenants requested that they be allowed to park their recreational vehicle in front of their home when loading and unloading before and after a camping trip, and to be allowed to park their recreational vehicle in the common area.

The tenants submitted that when they purchased their manufactured home and moved into the park in question, the park manager verbally told the tenants that if they should purchase a recreational vehicle, they could park the vehicle in the common area. The clause in the park rules in effect at that time prohibiting trailers referred to utility trailers, not recreational vehicles, according to the tenants.

The tenants submitted further that they were certain of this conversation with the park manager as they would not have purchased a home in a park where they could not park a recreational vehicle, whenever it may be purchased. The tenants submitted further that they made sure to purchase a home with ample parking.

In May 2011, the park rules were changed to include a recreational vehicle not being allowed in the park. The landlord submitted a copy of these park rules.

In May 2014, the park rules were changed, which still included the restriction against recreational vehicles generally, but now allowed a resident to bring a recreational vehicle onto the home site for 2 days at the beginning of the season and 2 days at the end of the season. The landlord submitted a copy of these park rules.

The tenants submitted that in July 2014, they purchased a recreational vehicle from another resident in the park who had kept the vehicle at his home. The tenants submitted that when they had the recreational vehicle parked in front of their home to clean it, another of the park managers drove by and in a profane and rude manner informed them they had remove the vehicle.

The tenants submitted that as retirees, living in a temperate climate, there is no commonly understood beginning and ending of a camping season, as they can go

camping all year round. The tenants submitted that the park rule prohibiting them from having their recreational vehicle at their site is impacting their enjoyment of their retirement, and that it was necessary to have the vehicle parked in front of their home when packing it before a trip and unloading it after a camping trip.

The tenants submitted that their neighbours do not object to their recreational vehicle being parked at their home site, as shown by the letters submitted into evidence.

The tenants did not confirm receipt of the park rules changes in May 2011, but did confirm receiving the park rules changes in May 2014.

Landlord's response-

In responding to the tenants' application, landlord's witness "SP" submitted that she was the individual ensuring that all tenants received a copy of any revised park rules, and reaffirmed that these tenants received their copies of these revised park rules.

Landlord's witness, "JA"-

JA confirmed that she is the park manager and has been for 8 years. JA denied telling the tenants that they would be allowed to bring a recreational vehicle onto their site or to park the recreational vehicle in the common area should they ever purchase such a vehicle.

JA confirmed that in the past, tenants were allowed recreational vehicles in the park, but that when she began management of the park, the owner informed her that his intention was to prohibit all recreational vehicles due to the numerous complaints being made by the residents. According to JA, the owner based his restrictions against recreational vehicles, among other vehicles, as the residents were being deprived of their quiet enjoyment and that he thought that recreational vehicles included campers, as listed in the park rules in effect at the inception of this tenancy in question.

JA agreed that anyone having a recreational vehicle prior to the February 2008 park rules were "grandfathered", as they were still allowed to park their recreational vehicles in the park. However, this did not include the tenants, as their tenancy began in October 2008 and their recreational vehicle was purchased in July 2014, after the latest park rules in May 2014.

In response to the landlord's witnesses, the tenants submitted that the continuing changes to the park rules have in effect changed a material term of their tenancy

agreement, and has caused a real change in their lives, as they are unable to camp and enjoy their retirement. The tenants questioned the need for the park rules, as there was plenty of space to park their recreational vehicle.

In final submission, the landlord's legal counsel argued that the tenants never had a contractual right to park a recreational vehicle on their site or in the park, that even if there had been a verbal agreement, which was denied, that agreement is overridden by the written agreement, and that the changes to the park rules are fair, apply to every resident, and are permitted by the Manufactured Home Park Regulations.

The landlord's additional relevant evidence included letters from park management to the tenants.

Analysis

Under section 32 of the Act, a landlord or park committee may establish or change park rules, as long as the rule is not inconsistent with the Act or regulations or a term in the tenancy agreement. In this case, a review of the written tenancy agreement shows that the agreement itself does not grant the tenants permission to park a recreational vehicle at their site or in the park.

The written tenancy agreement does, however, provide that the rules are material and binding on the parties.

It strikes me that if the tenants believed that being able to park a recreational vehicle in the park or at their site was of such materiality that they would not have entered into the tenancy otherwise, as argued by the tenants, that term would have been negotiated and included in the written tenancy agreement.

Section 30 of the Regulations provides, in applicable part, that a landlord may change or repeal park rules if it promotes the convenience or safety of the tenants and it protects and preserves the condition of the manufactured home park or the landlord's property.

This section goes on to say that the change or repeal of the park rules must apply to all tenants in a fair manner, be clear enough that a reasonable tenant can understand how to comply with the rule, notice of the rule is given to the tenant in accordance with the Regulations, and must not contradict a material term in a tenancy agreement.

After reviewing the evidence of both parties, I do not find that there is a term in the written tenancy agreement addressing the tenants' right to park a recreational vehicle at their site or in the park. As such, I find the changes to the park rules do to contradict a term, material or otherwise, in the written tenancy agreement, and the landlord is at liberty to change the park rules in accordance with the Act and Regulations.

In the matter before me, I find the tenants submitted insufficient evidence to show that the changes in the park rules were inconsistent with the Act and the Regulations as I accept the evidence of the park manager that the owner had received complaints from the residents about the disturbances to their quiet enjoyment regarding recreational vehicles, among other types of vehicles.

Overall and due to the above, I find I do not have authority under the Act to change the park rules of the landlord. I therefore dismiss the application of the tenants, without leave to reapply.

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: October 29, 2015

Residential Tenancy Branch