Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, OLC, FF

Introduction

This was an application under the *Manufactured Home Park Tenancy Act* (the Act) for a Monetary Order for loss of quiet enjoyment and recover the filing fee, and for the landlord to comply with the Act. The landlords and tenant were represented at the hearing. Both parties acknowledged receiving the evidence of the other.

Issue(s) to be Decided

Is the tenant entitled to compensation?
Is the tenant entitled to the monetary amount claimed?
Should the landlord be Ordered to comply with the Act?

Background and Evidence

The tenancy began in 2010. Rent for the home park site is $265.00 per month. I do not have benefit of a copy of the tenancy agreement nor the Park Rules. Regardless, the parties agreed that a copy of the tenancy agreement and the Park Rules are available to each.

The applicant tenant claims that since July 2014 the referenced *larger dog* of a neighbouring site's tenant has periodically interfered with the tenant's *3 smaller dogs:* attacking and injuring them. The tenant and landlord agreed that 6 such incidents since 2014 have resulted in the tenant complaining and communicating with the landlord about the incidents with a view to stopping the problem and eliminating opportunity for conflict between the dogs, and the resulting conflict between the tenants involved. The

applicant tenant provided some written accounts by other tenants of the park stating they had witnessed the larger dog “attacking” the smaller dogs. The applicant also provided their communication between the local government officials and the local regional district officials in their effort to resolve the problem, to no avail.

The landlord testified that the Park Rules, in respect to the subject of this matter, state that dogs must be neutered (“fixed”), and must be under an owner’s control on their site and “no barking or howling”. The landlord also testified that there is a limit of 2 dogs permitted. Both parties agreed owners are permitted to use the common areas for pets, while under the owner’s control. The landlord testified they have taken the tenants’ concerns and complaints seriously and in turn communicated with the other tenant to control their dog and that this approach has been moderately successful. The other tenant erected a chain link fence around their site and expressed a willingness to better control their dog. However, the applicant tenant stated the gate to the fenced area was ultimately left open and the larger dog obtained access to the tenant’s smaller dogs, molesting them. The landlord testified they have done what they consider to be reasonably possible to “keep everyone happy” over the past 2 years, but acknowledged that they have ultimately informed the other tenant in early September 2016 to immediately no longer permit the dog to occupy the tenancy. The landlord testified that to the best of their knowledge the dog has since resided with the other tenant’s girlfriend, but may have visited the home park with their owner. The applicant tenant testified that in their determination the landlord has never taken the tenant’s complaints and threats to their dogs seriously or they would have banned the larger dog sooner than 2 years after the problem was brought to their attention. The tenant testified that despite the recent effort at banning the larger dog’s presence in the home park they have seen the dog on 2 occasions in the park: on one occasion the dog growled at a visitor to the applicant’s property. As a result the applicant tenant does not feel comfortable allowing their 3 dogs outside access as the larger dog has shown a preference to attacking her smaller dogs. The landlord’s response was that they now intend to formally communicate with the other tenant, in writing, and will copy the applicant, that their dog is not allowed on the park property under any circumstances,

and effectively cannot visit the park. The applicant tenant testified that other than *the growling incident* the larger dog has not molested their dogs since filing their dispute and the dog has never been seen attacking or molesting any resident of the park.

The tenant seeks 50% of the rent paid for the 2 year period in dispute to August 2016, for a sum of $3397.50.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, and other resources can be accessed via the website: www.gov.bc.ca/landlordtenant.

I find that the testimony of both parties was matter of fact and unembellished. I accept the landlord's testimony they attempted to make the situation between the 2 tenants and their dogs acceptable for both and to make both tenants, in their words, "happy'. I also accept that despite the efforts of all parties the applicant tenant has endured periodic intrusions to their quiet enjoyment in the tenancy resulting from the other tenant's larger dog attacks on their smaller dogs. It must be noted that a resolution to this situation was hampered by the landlord's failure or unwillingness to take decisive action sooner than they have.

I draw the parties' attention to **Policy Guideline 6 – Entitlement to Quiet Enjoyment**. Specifically and in relevant part, it states as follows;

A. Basis for a finding of breach of quiet enjoyment

> A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.
>
> Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

> In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.
>
> A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Compensation for Damage or Loss

> A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the Arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

While I may accept the landlord took some steps to correct the problem over the 2 years in question, in this type of matter I find that when one tenant is repeatedly negatively affected by the actions, in-action, or conduct of another tenant it becomes necessary for the landlord to turn their attention to more diligently shielding the affected tenant from ongoing unreasonable disturbance, to which a tenant is entitled by Section 22 of the Act. In this matter, I find it was available to the landlord, along with enforcing their own Park Rules respecting pets, to more diligently deal with the cause of the ongoing disturbance sooner than they did rather than allow the problem to continue for over 2 years in hope of pleasing all parties. As a result, I find the tenant has suffered a loss of quiet enjoyment and is entitled to compensation.

I find the tenant's claim of half their rent for over 2 years in the claimed sum of $3397.50 is extravagant in contrast to all of the facts at hand. However, I accept the tenant has experienced a disturbance over an extended period: a problem which could have reasonably been alleviated sooner. I find that a set or nominal award is more appropriate to acknowledge the tenant's loss in this matter. Therefore, I grant the tenant set compensation in the amount of $750.00. The tenant is further entitled to

recover their filing fee of $100.00, for a total monetary award of **$850.00.** The tenant is given a Monetary Order in this amount. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court. The tenant can also choose to collect on the Monetary Order through reducing this amount from future rent payments.

As the landlord has already prohibited the other tenant from keeping the larger dog in their tenancy I find it is not necessary to Order the landlord to comply with the Act. Rather, it must be noted that it is available to the landlord to act on their good intention to formally ban the other tenant's larger dog from the park in writing, and provide proof of same to the applicant tenant.

Conclusion

The tenant's application, in relevant part, has been granted.
The tenant has been provided a Monetary Order.

This Decision is final and binding on both parties

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Residential Tenancy Act.

Dated: October 19, 2016

Residential Tenancy Branch