



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLEASANT VALLEY MHP INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the "Act") for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 55;
- authorization to recover his filing fee for this application from the landlord pursuant to section 65.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party. No issues of service were made by either party. I accept the undisputed evidence of both parties and I am satisfied that both parties have been sufficiently served as per section 83 of the Act.

Preliminary Issue

It was clarified with both parties at the outset that the tenants seek a finding that the Park Rules contravene the Residential Tenancy Branch Policy Guidelines and the Regulations. Both parties confirmed that section 9 (d) of the Park Rules states in part,

Maintenance of the Site and Landscaping

The Tenant must maintain the Site, the landscaping and the home in good repair and in a neat, clean and sanitary condition. Maintenance of improvements is entirely the responsibility of the Tenant, and the Landlord is not responsible or liable in any way for their repair, safety, construction standards, or future condition. Unless otherwise specified in a written agreement between the

*Tenant and the Landlord, **the Tenant is responsible for expenses and maintenance of...(d) the Site's landscaping, fencing, rock walls, driveways or other improvements.***

As such, the tenants seek an order directing the landlord to remove the two trees as they pose a safety risk to the tenants. The hearing proceeded on this basis.

Issue(s) to be Decided

Are the tenants entitled to an order for the landlord to comply with the Act, regulations or tenancy agreement?

Are the tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenants seek an order for the landlord to remove 2 or more trees on the pad site. The tenants claim that the trees are overgrown, unkempt and have been assessed by a tree removal company as being a danger. It was noted as being, "an accident waiting to happen". The tenants claim that the landlord has provided them with the park rules in which it states that all trees are the responsibility of the tenants which is a contravention of the Residential Tenancy Branch Policy Guideline(s). The tenants argue that Guideline #1, under Property Maintenance #5, states in part,

The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

The tenants also refer to the Manufactured Home Park Regulations, Schedule, which states in part,

- 7 (1) (a) The landlord must provide and maintain the manufactured home park in a reasonable state of repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.

- 7 (2) (a) The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the manufactured home site and in

common areas. The tenant must take the necessary steps to repair damage to the manufactured home site or common areas caused by the actions or neglect of the tenant or a person permitted in the manufactured home park by that tenant. The tenant is not responsible for repairs for reasonable wear and tear to the manufactured home site or common areas.

In support of the tenants claim, a copy of an invoice dated July 7, 2018 which states in part,

Spruce Hazard Tree

Remove Co-dominant stem. Potential Hazard oversized co-dominant stem.

Heavily loaded with limbs and cones leaning over trailer.

The landlord disputes the tenants' claims arguing that the park rules take precedence over that of the guidelines. The landlord stated that the guidelines and the regulations are to be used when there are no provisions in the park rules.

Analysis

Section 32 of the Act states in part,

In accordance with the regulations, a park committee or if there is no park committee, the landlord may establish, change or repeal for governing the operation of the manufactured home park; **Rules referred to in subsection (1) must not be inconsistent with this Act, or the regulations or any other enactment that applies to a manufactured home park;** Rules established in accordance with this section apply in the manufactured home park of the park committee or landlord, as applicable; **If a park rule established under this section is inconsistent or conflicts with a term in a tenancy agreement that was entered into before the rule was established, the park rule prevails to the extent of the inconsistency or conflict.**

I interpret in review of section 38 that if the park rules are in conflict with the Act, regulations or tenancy agreement that the park rules would take precedence. In this case, the applicant stated that the park rules are inconsistent with the residential tenancy branch policy guideline and the regulations.

The Residential Tenancy Branch Policy Guidelines state in part,

This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

I find that the residential tenancy branch policy guidelines are not part of the Act or regulations (legislation) and that the park rules would take precedence over that of the guidelines. I also find that the referred to regulations do not specifically detail responsibility for the landscaping which the park rules do. As such, I find that the park rules do not contravene the policy guideline or the regulations. The park rules, 9 (d) established by the landlord take precedence as they specifically detail the responsibilities of the tenant regarding the landscaping. The tenants' application is dismissed.

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 9, 2018

Residential Tenancy Branch