



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Manufactured Home Park Tenancy Act* (the “Act”), seeking an order for the Landlord to comply with the Act, regulation, or tenancy agreement, and recovery of the filing fee.

The hearing was originally convened by telephone conference call on October 15, 2018, at 11:00 AM and was attended by the Tenant, the Tenant’s advocate (the “Advocate”), the Landlord, and the Agent for the Landlord (the “Agent”), all of whom provided affirmed testimony. The hearing was subsequently adjourned due to time constraints and an interim decision was made on October 15, 2018. The reconvened hearing was set for November 26, 2018, at 9:30 AM. A copy of the interim decision and the Notice of Hearing was sent to each party by the Residential Tenancy Branch (the “Branch”) in the manner requested by them in the original hearing. For the sake of brevity I will not repeat hear the matters summarized or the findings of fact made in the interim decision. As a result, the interim decision should be read in conjunction with this decision.

The hearing was reconvened by telephone conference call on November 26, 2018, at 9:30 AM and was attended by the Tenant, the Advocate, and the Landlord, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision.

At the request of the Tenant, copies of the decision and any orders issued in her favor will be sent to her and her advocate at the e-mail addresses confirmed in the hearing. At the request of the Landlord, copies of the decision will be mailed to him at the mailing address provided by him in the hearing.

Issue(s) to be Decided

Is the Tenant entitled to an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that the dispute relates to boundary lines of a manufactured home site (the “site”) rented by the Tenant, site #51, in an owner occupied Manufactured Home Park. The Tenant stated that a chain-link fence put up by the occupants of a neighbouring manufactured home site, site #50, sometime during the summer of 2016, and an adjacent shed, is actually on her site, not theirs. The Tenant also stated that several trees were removed by the occupants of site #50 without approval. The Tenant acknowledged that the fence went up in 2016, and at that time, she took no issue with its placement. However, the Tenant stated that when the occupants of site #50 cut down trees between their sites without permission and added a shed which abuts the fence in June and July of 2018, she became aware of exactly how much land had been unlawfully taken from her site by the occupants site #50 and exactly how the encroachment of the fence and shed as well as the removal of the trees impacts her use and enjoyment of her own manufactured home site. As a result, she now wants the fence and shed removed so that she has exclusive possession of the manufactured home site rented to her under her tenancy agreement.

The Tenant provided a sketch of her site for my consideration, which both parties agreed was provided to the Tenant at the start of her tenancy in 2008. The Tenant stated that the edge of the driveway on site #50 (the left side of the driveway on site #50 when facing the manufactured home) and the middle of the hedges between her site and site #50 delineate the boundary between the sites. The Tenant also provided several photos of her site, the shed, and the fence which she stated clearly shows, when compared with the sketch, that the entire fence put up by her neighbours in site #50 is on her side of the site boundary with the level of encroachment on her site ranging from several inches to several feet. In further support of her assertion that the hedges delineate the property line, the Tenant pointed to correspondence in the documentary evidence before me from an agent for the Landlord stating that the occupants of manufactured home sites on either side of hedges are responsible for the trimming of the hedges facing their sites.

In addition to the above, the Tenant stated that the Agent acknowledged by way of a letter to the occupants of site #50 dated August 6, 2018, that the fence was put up without approval and would have to be removed as it was on the Tenant's site. She stated that the letter also advised the occupants of site #50 that the boundaries of the manufactured home sites would not be changed to accommodate their fence. Despite the foregoing the Tenant stated that the Landlord has refused to make the occupants of site #50 remove or move the fence, despite her proposal to pay for the cost of the original fence, and in fact advised her by telephone that the boundaries of her site would be changed as the fence had been up too long.

The Tenant speculated that the occupants of the neighbouring unit were and still remain aware of the fact that they have unlawfully placed the fence on her manufactured home site and not their own, and that they have done this intentionally in order to unlawfully increase their lot size to both entice potential buyers of the manufactured home and to secure a higher price through its sale.

Although the Tenant acknowledged that the fence has been place since approximately the summer of 2016, she stated that she was away for several months while it was erected and that she has attempted to work with the Landlord to have it removed since August 1, 2018, without success. As a result, the Tenant requested an order that the fence and the neighbours shed be removed or moved to reflect the actual site lines of the site rented to her under her tenancy agreement. In support of her testimony the Tenant pointed to the following relevant documentary evidence:

- Photographs showing the neighbours fence and shed;
- Photographs showing the hedge lines she states delineate the actual manufactured home site boundaries;
- A sketch of the manufactured home site boundaries both parties agreed was given to her at the start of her tenancy;
- A written letter from the Agent D.B. to the occupants of the neighbouring manufactured home site advising them that the chain-link fence must be removed as it is on the Tenants manufactured home site and that the boundaries of the manufactured home sites have not and will not be extended;
- Four letters from the Landlord; and
- A copy of a real estate listing for the neighbouring property.

Although the Landlord agreed that a fence had been erected by the Tenant's neighbours in site #50 without approval, and that the fence was in fact on the Tenant's site, he argued that the level of encroachment was significantly less than that asserted

by the Tenant. Specifically the Landlord stated that the fence is only a few inches on the Tenant's site, not several feet as the Tenant stated. Further to this, he stated that the fence was actually erected sometime near the start of 2016, not the summer of 2016 as alleged by the Tenant, and that the Tenant has simply waited too long to bring this issue forward. As a result, the Landlord argued that the fence, which is now well established and in excellent condition, should not be moved or removed. He did however agree that a shed which abuts the fence on the neighbours' property needs to either be moved approximately 3 feet away from the fence within the boundaries of the neighbours' site, or removed entirely. He also agreed that the hedges between the two manufactured home sites were to be shared by the occupants of the manufactured home sites on either side. However, he disputed that the hedges delineate the boundaries of the manufactured home sites or that there is any rule stipulating who is responsible for the trimming of the hedges.

Analysis

Section 12 of the *Manufactured Home Park Regulation* (the "regulation") states that a landlord must ensure that a tenancy agreement contains the boundaries of the manufactured home site measured from a fixed point of reference. Both parties agreed that the sketch of the manufactured home site boundaries provided by the Tenant in the documentary evidence before me was given to her at the start of the tenancy regarding her site boundaries. The Tenant pointed to this sketch and an aerial photograph of her mobile home site and several adjacent sites, and stated that the boundary between her site (#51) and site #50, runs down the left side of the driveway of site #50 (when facing the manufactured home) and between the middle of the trees/hedges separating the two sites. Further to this, there is a letter in the documentary evidence before me for consideration, dated October 7, 2013, in which an agent for the Landlord advises the Tenant that tenants in the Manufactured Home Park are responsible for trimming the hedges facing their units. In my mind, this letter further supports the Tenant's testimony regarding the site boundaries as it would be unreasonable to make tenants responsible for the trimming of hedges not on their rented manufactured home sites. Based on the above, I therefore find that the boundary between the Tenant's site (#51) and site #50 runs down the left side of the driveway of site #50 (when facing the manufactured home) and between the middle of the trees separating the two sites.

Having made this finding, I will now turn my mind to the Tenant's claim that a fence and shed erected by the occupants of site #50 are actually on her manufactured home site. While the Landlord agreed that a shed erected by the occupants of site #50 needs to be moved approximately three feet into mobile home site #50 or removed entirely, the

Landlord argued that the fence in question is well established, in good condition, and only encroaches on the Tenant's manufactured home site by a few inches. As a result, he therefore argued that it should not be moved or removed. Further to this, he took issue with the fact that the Tenant waited several years to bring her displeasure with the placement of the fence forward.

While I appreciate the Landlord's position that it might have been easier to stop the erection of the fence entirely or to have removed or moved it at an earlier date, The Tenant testified that she was not present at the time the fence was constructed and that its placement only became an issue for her in July of 2018 when the occupants of mobile home site #50 cut down several trees and built a shed so close to the fence that it could not even be finished without crossing the fence onto her mobile home site. Further to this, section 53 of the *Act* states that if the *Act* does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned. As the *Act* contains no other statutory timeframe for applications seeking that a landlord comply with the *Act*, regulation, or tenancy agreement and the parties agree that the tenancy is ongoing; I find that the Tenant has not breached the *Act* by filing her Application when she did. Based on the above, I find that the Tenant was entitled to file her claim and to have it heard and decided on its merits by the Residential Tenancy Branch (the "Branch") despite the Landlord's argument that it was not filed in what he would consider a timely manner.

Although the parties disagreed about the amount of the Tenant's site impacted or encroached upon by the fence and shed, ultimately there was no disagreement that the fence and the shed are at least partially on the manufactured home site rented to the Tenant under her tenancy agreement. Although the Landlord believes that the encroachment is insignificant and therefore the fence should not be moved or removed, Section 14 (2) of the *Act* states that a tenancy agreement may only be amended to add, change or remove a term, if both the landlord and the tenant agree to the amendment. As stated earlier in my decision, I have already found that the boundary between manufactured home site #50 and manufactured home site #51 runs down the left side of the driveway of site #50 (when facing the manufactured home) and between the middle of the hedges separating the two sites. As this is the boundary that was in place at the time the tenancy agreement was entered into by the tenant, I find that neither the Landlord nor the occupant of site #51 can change this boundary without the Tenant's express consent, pursuant to section 14 of the *Act*, regardless of whether the boundary is to be moved several inches or several feet.

Section 55 of the *Act* states that the director may make any order necessary to give effect to the rights, obligations, or prohibitions under the *Act*, including an order that a landlord or tenant comply with the *Act*, regulations, or a tenancy agreement. Based on the above, I therefore grant the Tenant's Application seeking an order that the Landlord comply with the *Act*, regulation, or tenancy agreement and provide her with exclusive possession of the manufactured home site rented to her under her tenancy agreement. As a result, I make the following orders:

- **I order** the Landlord, at no cost to the Tenant, have the chain-link fence between manufactured home site #50 and #51 removed or moved outside of the boundaries of manufactured home site #51 as outlined in this decision, so as not to encroach on the Tenant's manufactured home site, and in accordance with any park rules or municipal guidelines.
- **I order** that the fence be removed or moved by the Landlord as soon as reasonably possible, and in any event, **not later than 60 days** from the date of this decision.
- **I order** the Landlord, at no cost to the Tenant, to have the shed constructed by the occupants of manufactured home site #50 removed entirely from the Tenant's manufactured home site or moved outside of the boundaries of manufactured home site #51 as outlined in this decision, so as not to encroach on the Tenant's site, and in accordance with any park rules or municipal guidelines.
- **I order** that the shed be removed or moved by the Landlord as soon as reasonably possible, and in any event, **not later than 60 days** from the date of this decision.
- **I order** that the Tenant provide all reasonable and necessary access to their site in order to facilitate the Landlord's compliance with this decision and associated orders.

The Tenant is not responsible for incurring any of the costs associated with the removal of the fence and shed from their manufactured home site (site #51); however, should the Landlord be required to incur these costs in order to comply with this decision and the associated orders, the Landlord remains at liberty to seek recovery of these costs from the occupants of site #50 by filing an Application for Dispute Resolution with the Branch, should they wish to do so.

Should the Landlord fail to comply with this decision and the associated orders, the Tenant remains at liberty to file an Application for Dispute resolution with the Branch

seeking compensation for the Landlord's failure to comply with the decision and orders and any damage or loss associated with this non-compliance.

As the Tenant was successful in her Application, I also grant her recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*, which she is entitled to deduct from the next month's rent.

Conclusion

The Tenant's Application seeking an order that the Landlord comply with the *Act*, regulation, or tenancy agreement is granted. The Tenant is also granted recovery of the \$100.00 filing fee.

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 30, 2018

Residential Tenancy Branch