

DECISION

Dispute Codes ERP, OLC, MNDC, RR

Introduction

This hearing dealt with a Tenant's Application for Dispute Resolution. The tenant requested an Order for emergency repairs, Orders for the landlord to comply with the Act, regulations or tenancy agreement; monetary compensation for damage or loss under the Act, regulations or tenancy agreement; and, authorization for a rent reduction.

The hearing was adjourned twice in order to provide the landlord the opportunity to appear with an interpreter and to provide the parties opportunity to submit additional evidence.

The issue of jurisdiction was raised during the hearing. I heard evidence related to the dispute assuming I had jurisdiction and I reserved my decision regarding jurisdiction.

The landlord submitted documentary evidence the tenant claims not to have been served. I read from a portion of the landlord's evidence and provided the tenant the opportunity to respond to it. Therefore, I accepted the landlord's evidence in making this decision.

The tenant also submitted evidence not served upon the landlord at the time of the teleconference call. The tenant was asked to verbally describe the evidence and read from a document to which she referred to as a tenancy agreement. The landlord was provided the opportunity to respond to this evidence and I have considered the evidence in making this decision. The tenant also provided photographs of the rental

site not served upon the landlord at the time of the teleconference call. The tenant agreed to serve the photographs upon the landlord and I accepted the photograph to

assist me in determining jurisdiction and as a means to determine whether the tenant was overloading the electrical system as alleged by the landlord.

Issues(s) to be Decided

1. Does the *Manufactured Home Park Tenancy Act* (the Act) apply to the parties and do I have the jurisdiction to resolve this dispute?
2. Are emergency repairs required?
3. Are Orders of compliance required?
4. Is the tenant entitled to compensation from the landlord?

Background and Evidence

The parties provided undisputed testimony as follows. The tenant rented site #104 starting in January 2009 on a month to month basis and paid a \$225.00 security deposit. While residing at site #104 the tenant lived in a campervan. In August 2009 the tenant purchased a recreational vehicle on site #108 and began occupying site #108 for a monthly rent of \$450.00 including hydro and cable. Effective January 2010 the landlord required the tenant to pay rent of \$485.00 per month and imposed this increase by way of a letter delivered to the tenant. The tenant's rent has been paid by the Ministry and until June 2010 the monthly rent paid by the Ministry was \$450.00 per month.

Upon enquiry, the parties provided the following information with respect to the rental property, the rental site and the agreement between the parties. The property has two zonings: one zone contains 97 mobile home sites and the other zone accommodates 11 recreational vehicle (RV) sites. The tenant's manufactured home occupies one of the RV sites. At the start of the agreement between the parties, the parties agreed the

tenant would rent on a month-to month basis. Rent is payable monthly and does not include tax. The monthly rent includes hydro and cable but not telephone. Common laundry facilities are available to occupants at a cost of \$20.00 per month. The RV sites

are generally rented on a monthly basis but may be rented on a shorter basis. Security deposits are collected from occupants. The landlord completed a shelter information form in order to receive direct rent payment from the Ministry on behalf of the tenant.

The tenant paid the landlord \$70.00 in cash with respect to the rent increase for two months. The landlord denied there were receipts to show payment. The tenant claimed the landlord took the receipts out of her hand and pushed her down the stairs. The tenant claimed the police were called as a result of the incident and she has a police file number as evidence.

The tenant claims that when the tenant moved to site #108 the landlord required her to pay a security deposit of \$250.00 even though there was a deposit of \$225.00 paid for site #104 that was not refunded to her. The tenant is requesting a refund of the \$250.00 security deposit.

The tenant claims that in March 2009, June 2009, August 2009, January 2010 and March 2010 the landlord has disconnected her power causing her to lose food and the damaging the tenant's power cord as a result. The tenant has been able to have a friend temporarily fix the power cord but it requires a permanent repair. At the time of making this application, the tenant was requesting compensation of \$250.00 for loss of food. During the hearing, the tenant requested an additional \$15.00 paid for the cost of the temporary fix paid by or to her friend.

The landlord acknowledged unplugging the tenant's power supply and explained that this was done for safety reasons as the tenant was overloading the system by running too many appliances. The landlord is of the position that it is the tenant's power cord that requires repair and that this is the tenant's responsibility.

During the hearing, the landlord responded to the tenant's assertions by stating that the tenant had agreed to cancel the hearing as evidenced by the tenant's signature on an

written agreement signed by the tenant. The landlord had provided a copy of the agreement which states, in part,

“I will pay \$70 on Sat. May 1. I will pay \$105 remaining in 2 weeks. If I fail to keep this promise [name of landlord] has the right to shut of hydro to unit 108 [tenant’s signature].

“This is to terminate arbitration which would have taken place April 19, 2010 [tenant’s signature].

“Main power line is not use until main casing is replaced. Temporarily only use small yellow extension cord. This line use only light fridge – no heat, no microwave or ovens.”

The tenant explained she signed this agreement as she was desperate to have power restored and the landlord was intimidating her.

The tenant submitted photographs as evidence. The photographs appear to depict a black main power cord and a yellow extension cord at the power supply connection. The photographs also appear to depict small freezer and refrigerators used by the tenant and other tenants.

The tenant provided copies of benefit statements showing rent payments of \$450.00 were made to the landlord by the Ministry on the tenant's behalf; copy of a receipt dated August 11, 2009 indicating \$250.00 was collected by the landlord for a security deposit; a receipt for \$450.00 for “pad rent”; a copy of the letter dated November 30, 2009 to increase the rent; and, a copy of the Shelter Information form signed by the landlord.

Analysis

Jurisdiction

The first issue to determine in this matter is whether the Act applies to the agreement between the parties with respect to use of the property. It is not in dispute that the trailer owned by the tenant is a recreational vehicle and is located on a site designated for RV use by its zoning. Under the Act, a recreational vehicle is included in the definition of manufactured home. Under the Act a manufactured home site may include a site with RV zoning. At issue is whether the parties entered into a tenancy. The definition of tenancy does not include a license to occupy. Unlike the *Residential Tenancy Act*, where a license to occupy is included in the definition of a tenancy, a license to occupy was intentionally not included in the definition of tenancy under the *Manufactured Home Park Tenancy Act*. I find the exclusion of licenses to occupy in the definition of tenancy under the *Manufactured Home Park Tenancy Act* is to exclude sites rented by recreational vehicles in seasonal campgrounds where the intention is to use the site temporarily.

In support of the above finding, I refer the decision of Mr. Justice Bracken of the Supreme Court of British Columbia, in ***Steeves v. Oak Bay Marina Ltd.***, 2008 BCSC 1371. There, the issue that concerned the court was the distinction between permanent manufactured home sites and recreational vehicle sites, or permanent sites and recreational vehicle sites. At paragraph 111 and 112, Justice Bracken says:

...it is my view that the MHPTA [Manufactured Home Park Tenancy Act] is intended to provide regulation to tenants who occupy the park with the intention of using the site as a place for a primary residence and not for short-term vacation or recreational use where the nature of the stay is transitory and has no features of permanence.

The MHPTA is not intended to regulate seasonal campgrounds that are utilized ...by wheeled vehicles intended and used as temporary accommodation and licensed to [operate under] their own power or towed behind other vehicles...

In order to determine whether a particular arrangement is a license to occupy or a tenancy, I have considered what the parties intended when the arrangement was formed and all of the circumstances surrounding the occupation of the premises.

In this case, I note that the tenant was required to pay a security deposit, that both parties completed the shelter information form so that rent payments would be paid directly to the landlord every month, and documents signed by the landlord indicate the tenant pays "pad rent". I find these actions and documents indicative that both parties intended for this arrangement to be for more than vacation or recreational accommodation. Rather, I am satisfied that when the tenant purchased the manufactured home from the landlord, which was situated on site #108, the parties did so with the intention to provide rental accommodation to the tenant on a month to month basis as the tenant's primary residence. Therefore, I am satisfied that the parties entered into a tenancy for site #108 in August 2009 and that the *Manufactured Home Park Tenancy Act* applies to the parties. Accordingly, I have found jurisdiction to resolve this dispute.

Section 5 of the *Manufactured Home Park Tenancy Act* also provides that landlords and tenants may not avoid or contract out of this Act or the regulations. Further, any attempt to avoid or contract out of this Act or regulations is of no effect.

As the tenant's Application for Dispute Resolution pertains to site #108 I refuse to consider matters related to site #104. Any dispute related to site #104 may be raised in the appropriate form.

Security deposit

Section 17 of the Act pertains to security deposits. Under the Act, a landlord must not require or accept a security deposit in respect of a manufactured home site tenancy. Further, if a landlord accepts a security deposit from a tenant, the tenant may deduct the amount from rent or otherwise recover the amount from the landlord.

I am satisfied the tenant paid a \$250.00 security deposit for site #108 and since this is not permitted under the Act, I find the tenant entitled to recover this amount from the

landlord. Therefore, I award the tenant \$250.00 for the security deposit paid for site #108.

Emergency repairs

I am satisfied the landlord disconnected and restricted the tenant's ability to connect her main power cord to the electrical connection, including placing a lock on the connection. The Act prohibits a landlord from terminating or restricting an essential service. I find electricity to be an essential service. Rather, if a landlord is of the position the tenant owes rent the Act provides a remedy to the landlord. The remedy does not include disconnecting services or facilities. Since parties cannot contract out of the Act, the tenant cannot authorize a landlord to terminate an essential service; thus, the written agreement signed by the tenant authorizing the landlord to disconnect the hydro is of no effect and is completely unenforceable.

With this decision, I ORDER the landlord to:

- 1. immediately remove any device that restricts the tenant's ability to connect the main power cord from her manufactured home to the electrical connection; and,**
- 2. ensure power is supplied to the electrical connection at the site and it not otherwise restricted or terminated.**

Other orders to landlord for compliance

The Act provides for ways a landlord may increase rent. The landlord's letter to the tenant in December 2009 does not comply with the requirements of the Act. Therefore, I find the letter does not legally increase the rent to \$485.00 per month. I further find that the monthly rent remains at \$450.00 per month until such time it legally increases. I

ORDER the landlord to accept payment of \$450.00 per month as rent paid in full. I am satisfied, on the balance of probabilities, that the tenant paid the landlord \$70.00

representing two months of the \$35.00 per month increase and that this amount may be recovered by the tenant.

I am satisfied the landlord violated the Act with respect to entering the manufactured home site without consent or proper notice. The landlord did not satisfy me that he disconnected the power supply due to a safety hazard since the tenant provided photographs of other RV sites with small freezers or refrigerators. Rather, from the landlord's evidence, I find it more likely than not that the landlord disconnected the hydro due to the landlord's belief the tenant had not paid rent when due. Therefore, **the landlord is ORDERED to comply with the requirements of section 23 of the Act** which restricts the landlord's right to enter the manufactured home site.

The tenant is also entitled to quiet enjoyment of the site she rents and use of the common property free from significant interference under section 22 of the Act. **The landlord is ORDERED to comply with section 22 of the Act** and not interfere with the tenant's right to quiet enjoyment of the site and common property. If the landlord is of the position that the tenant has breached the Act, regulations or tenancy agreement, the landlord's remedy is to issue the appropriate communication or notice to the tenant and make an Application for Dispute Resolution. Harassment or physical altercations are not options available to the landlord under the Act.

Failure to comply with the above orders will entitle the tenant to make a subsequent application for compensation from the landlord.

Sections 22 and 23 of the Act provide as follows:

Protection of tenant's right to quiet enjoyment

22 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the manufactured home site subject only to the landlord's right to enter the manufactured home site in accordance with section 23 *[landlord's right to enter manufactured home site restricted]*;
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Landlord's right to enter manufactured home site restricted

23 A landlord must not enter a manufactured home site that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord has an order of the director authorizing the entry;
- (d) the tenant has abandoned the site;

(e) an emergency exists and the entry is necessary to protect life or property;

(f) the entry is for the purpose of collecting rent or giving or serving a document that under this Act must be given or served.

[my emphasis added]

Damage or Loss under the Act, regulations or tenancy agreement

The tenant has claimed loss of food valued at \$250.00. The tenant did not provide receipts to show the replacement of food; however, I find it likely that food was lost due to the disruption of power. The tenant also explained that she has little money for food and grows some of food. Since the power was disconnected three times since the tenancy at site #108 began I award the tenant a nominal award of \$50.00 per occurrence for a total of \$150.00 for damage or loss due to a violation of the Act by the landlord.

I award the tenant an additional \$100.00 for the loss of use and enjoyment of the site due to the power disconnections.

I am further satisfied that the tenant had to employ the assistance of a friend to repair the power cord and that the power cord was damaged by the landlord disconnecting the plug. I have amended the tenant's application to include this request as I am satisfied the landlord has had an opportunity to respond to this issue over the course of the proceeding and the amendment does not prejudice the landlord. Therefore, I award the tenant \$15.00 for the power cord repair.

Monetary Order

The tenant has been successful in establishing an entitlement to monetary compensation of \$585.00 against the landlord as follows:

Return of security deposit	\$ 250.00
Overpayment of rent	70.00
Loss of food	150.00
Loss of use and enjoyment	100.00
Power cord damage	<u>15.00</u>
Total award to tenant	\$ 585.00

The landlord is ordered to pay the tenant \$585.00 forthwith. The tenant is provided a Monetary Order to serve upon the landlord and file in Provincial Court (Small Claims) to enforce as necessary.

Conclusion

The *Manufactured Home Park Tenancy Act* applies to this tenancy and I have found jurisdiction to resolve this dispute.

The tenant was successful in establishing an entitlement to compensation of \$585.00 from the landlord. The landlord is ordered to pay the tenant \$585.00 forthwith. The tenant is provided a Monetary Order in the amount of \$585.00 to ensure payment.

The landlord also ordered to: 1) comply with section 23 of the Act with respect to the landlord's restricted right to enter the manufactured home site; 2) comply with section 22 of the Act with respect to the tenant's right to quiet enjoyment; 3) provide electricity to the manufactured home site so that the tenant may obtain electricity through the main power cord; and, 4) accept payment of \$450.00 per month as rent paid in full.

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: June 10, 2010.

Dispute Resolution Officer