



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes DRI, MNSD, OLC, LRE, FF, O

Introduction

This matter was conducted by way of written submissions, pursuant to section 54(b) of the *Manufactured Home Park Tenancy Act (Act)*, and dealt with joined Applications for Dispute Resolution by several residents of a float home community.

A hearing date had originally been scheduled for May 28, 2010 but had been deferred, in accordance with Section 51(2)(c) of the *Act*, pending the outcome of the respondent's application to the Supreme Court of British Columbia on a matter substantially linked to this Application.

As the matter before the Supreme Court of British Columbia is now concluded the Director has ordered a hearing by written submission on the issue of jurisdiction.

Both parties were to and did provide submissions no later than July 23, 2010 to each other and to the Residential Tenancy Branch.

Issues(s) to be Decided

The issues to be decided, by way of their application, are whether the applicants are entitled to an order to have the respondent comply with the *Act*; to set conditions on the respondent's right to enter the sites; to cancel an additional rent increase; to a monetary order for return of the security deposit and to recover the filing fee from the respondent for the cost of the Application for Dispute Resolution, pursuant to Sections 23, 36, 60, and 65 of the *Act*.

Prior to any consideration of the above noted issues raised by the applicants, it must be determined, based on the respondent's assertion that no tenancy exists, if the Director has jurisdiction over the matters, in accordance with Sections 1, 2, 9, and 55 of the *Act*.

Background and Evidence

The applicants submit there is nothing in the *Act* that requires manufactured home sites or parks be based on land and that the definition of a manufactured home includes float homes as they are living accommodation designed to move from place to place by being towed. Further, the applicants contend that despite being covered by water the

land has been mapped and deposited in the provincial land registry with a parcel identifier provided under the *Land Title Act*.

The applicants suggest that although the *Act* does not specifically address the issue of manufactured home parks covered by water, the legislature enacted the *Act* cognizant of existing legislation, such as the *Manufactured Home Act* and the *Manufactured Home Taxation Act*, which recognizes manufactured home parks that are covered by water.

The applicants assert that the wording of the agreement between the parties, entitled “Licence to Use”, is not sufficient to exclude the Director’s jurisdiction over residency matters of the parties at this float home community.

In addition the applicants state that contrary to the respondent’s position that the applicants do not hold possession of their sites because the respondent maintains the right to full and complete access to the water lot space without the applicant’s permission; to enter the float homes to provide emergency services in the applicant’s absence; and to change temporarily or permanently the space assigned to an applicant, none of the provisions negate the fact that they enjoy possession and are tenants.

The applicants hold that no employee or agent of the respondent has entered any of the water lot space without the applicant’s permission and that except for one applicant none have had to move their float home against their will. The applicants contend that the respondent’s authority to re-assign a site does not negate the applicant’s possession of the site that their home occupies at any given time.

In addition in one instance the applicants assert the respondent executed an Assignment of Site Lease with a chartered bank under which one of the float home owners assigned to the bank his interest in land owned by the respondent that declares the float home owner is in occupation or possession of a lot or parcel of land owned by the respondent.

The applicants provide the following comments on each of the indicators against finding a tenancy found in Residential Tenancy Policy Guideline 9:

Indicator	Comment
1. Payment of a security deposit is not required.	Applicants are required to pay a security deposit.
2. Owner retains access to or control over portions of the site.	Applicants enjoy access to complete parcel. Respondent does not retain access to or control portions of the site.
3. Occupier pays property taxes and utilities but not a fixed amount for rent.	Applicants pay a fixed amount for rent as well as utilities and property taxes.
4. Owner retains the right to enter the site without notice.	Respondent cannot “enter” the rented site except to have its employees, for example, snorkel or scuba under the float home

	itself. The respondent has reserved the right to enter the float home but only in narrowly circumscribed situations.
5. The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.	No Family or personal relationships and respondent required a damage deposit and monthly rent, not generosity.
6. The parties have agreed the occupier may be evicted without any reason or may vacate without notice.	The contract states an applicant may be evicted on 7 days notice for failure to pay fees or on one month's written notice. The applicants suggest that the respondent has never exercised this power and that the purpose of this clause may be to disguise a tenancy and evade the obligations of the <i>Act</i> .
7. The manufactured home is intended for recreational rather than residential use.	The float homes are the applicants' principal residences and the respondent requires them to be used for residential purposes.
8. The home is located in a campground or RV park, not a Manufactured Home Park.	The float homes are not located in a campground or RV park but are in a manufactured home park.
9. Rent is calculated on a daily basis, and G.S.T. is calculated on the rent.	Rent paid is calculated both yearly and monthly, payable monthly; the rent is not subject to GST.
10. Property owner pays utilities such as cable vision and electricity	Applicants pay their own electricity and utility charges.
11. There is no access to services and facilities usually provided in ordinary tenancies, e.g. frost-free water connections	The respondent provides access to services and facilities such as water, sewage, electrical, garbage, paid parking and access to common areas.
12. Visiting hours are imposed	The respondent does not impose visiting hours.

In relation to constitutional authority, the applicants contend that at this time there is no federal law applicable to tenancies within the port that would hold valid and paramount over provincial law and therefore no constitutional reason why the respondent should be immune from the application of the *Act*.

The respondent contends the Director has no jurisdiction under the *Act* or any other enactment to make decisions with respect to matters and disputes arising between the parties as the applicants have licenses for use and not tenancy agreements.

The respondent also notes that float homes at this site are subject to the Federal Harbour Master's Order "Standards for Float Homes and Live Aboard Vessels in (this) Harbour".

The respondent outlines that the licenses for use granted to each of the applicants have the following terms and conditions:

- A. The applicants are provided a license for use of the land identified as a berth on any one of 2 ½ fingers of the wharf(licence area) for the purpose of berthing the float home and no other purpose;
- B. The respondent reserves the right to have full and complete access to the licence areas;
- C. The respondent reserves the right to change the berth assigned as necessary for efficient operation of the wharf or for emergency or safety. The respondent also reserves the right to have the applicant pay the costs for relocating the float home;
- D. The term of the agreement is from April to March 31, annually unless terminated earlier;
- E. The respondent may end the agreement if an applicant remains in default of any charges, fees or costs payable under the agreement or remains in breach of the agreement 7 days after being notified of the infraction. In addition the respondent may terminate the agreement by giving the applicant one month's notice in writing; and
- F. Miscellaneous clauses that state the agreement shall not be interpreted as granting any interest in the licence area to the licensee and that the agreement is not assignable or transferable.

Specifically the respondent argues that the license of use issued is not a tenancy agreement because it does not grant the applicants any exclusive right of possession; it does not include the respondent's covenant to provide quiet enjoyment; and it specifically states that no interest in the licence area is granted to the applicants.

Analysis

Residential Tenancy Policy Guideline 9 entitled Tenancy Agreements and Licenses to Occupy states that it "is intended to help parties to an application understand issues that are *likely* to be relevant". The two page document is intended to provide some general guidance to a plethora of circumstances and cannot possibly be expected to apply to all circumstances, arrangements or agreements.

For example, in the chart above that outlines the applicant's comments on each of the factors outlined in Guideline 9, Indicator 1 stipulates that payment of a security deposit not being required is a factor that a tenancy is not indicated. Clearly this indicator applies to the *Residential Tenancy Act* as the *Act* does not allow landlords of manufactured home parks to collect a security deposit.

In addition, indicators 7 to 12 were developed specifically to assist in determining if the *Act* applies to recreational vehicles such as travel trailers, making the value of these indicators, in this case, questionable.

To illustrate, in campgrounds the property owner is most likely going to pay for utilities while in most manufactured home parks the occupiers are most likely to pay utilities. However, there are many tenancies that fall under the *Residential Tenancy Act* where utilities are included in the rent and therefore are paid for by the landlord or property owner.

So while the indicator may provide value in distinguishing if the *Act* applies to a recreational vehicle when compared to a manufactured home, the same value to this information cannot, necessarily, be translated to all situations.

In accordance with the guideline that states “The written contract suggests there was no intention that the provisions of the *Manufactured Home Park Tenancy Act* apply”, I am not persuaded by the applicants’ contention that the language of the contract between these two parties is “far from determinative of the parties’ legal relations of the jurisdiction of the Director over the residency arrangements”.

While all of these guideline factors have been considered in this decision, ultimately, the applicants must show how the arrangement they have with the respondent is one of a tenancy pursuant to the *Act*, not the guidelines.

Section 2 of the *Act* states: “Despite any other enactment but subject to Section 4, this *Act* applies to tenancy agreements, manufactured home sites and manufactured home parks.” In order to have the *Act* apply to the relationship between these two parties all three of these components must be a constituent of that relationship.

Section 1 defines “tenancy agreement” as an agreement, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities. This section also defines “tenancy” as a tenant’s right to possession of a manufactured home site under a tenancy agreement.

The applicants assert that when the residency relationship was formed the respondent had greater power and control and therefore the Director must carefully examine the respondent’s assertion the applicants have waived their rights as an attempt to disguise a grant of tenancy and deny access to protection under the *Act*.

As per the respondent’s submission, the contracts entered into by the parties are renewed on an annual basis and while some of the applicants have only had contracts with the respondent developed within the last year many have renewed their relationship with the respondent multiple times, including one applicant who has renewed the contract at least 10 times.

As such, I am not persuaded by the applicant's argument that this power differential exists or has the same impact as the original signing after so many successive years of entering into these agreements.

The contract itself, entitled "Licence of Use", bestows upon the applicants the ability to use a portion of the respondent's land in an area noted as the "licence area" that includes Fingers 1, 3 or the east side of finger 2 of the wharf that currently accommodates all of the float homes on the parcel of land, as a "berthage space" and for no other purpose.

Section 1 of the Act defines a manufactured home site as "a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home."

Notwithstanding the applicant's assertion that they are living on manufactured home sites, I accept the landlord's assertion that the permission granted under the agreement does not identify any specific area or site but does identify a common area that is shared by all the residents for which the respondent maintains the ability to reassign berths at any time for any purpose, including the efficient use of the space.

The agreement also outlines that the respondent maintains the right to enter the licence area; to change assigned berths as required for the efficient operation of the wharf or for other causes; and to enter the float home for any emergency service required to be provided. The agreement also stipulates that the agreement shall not be interpreted as granting any interest in the licence area to the applicants.

I also accept the respondent's assertion that by informing the applicants of a project to move 75 homes in 2007 and providing the float home owners with an opportunity to be consulted prior to the move did not impact the authority in the agreement allowing the respondent to make these moves.

The applicants assert that other manufactured home park owners may require a resident to relocate, either temporarily or permanently, resulting from a specific event or need. I accept the respondent's position that they retain the right to reassign berths for any reason and not in response to specific events.

The respondent disagrees with the applicants' position that the only way to enter the rented site is by snorkel or scuba under the float home because the float home takes up the entirety of the surface of the site. On this issue, I find that since no specific site is assigned to an individual float home owner and therefore the applicant's assertion that the float home takes up the entirety of the surface of the site is unsubstantiated.

I accept the respondent's position that just because the respondent has provided notice to the applicants when there is an intention to enter a site or float home the respondent has not relinquished its right under the agreement to do so but rather is intended to extend a courtesy to the applicant.

As noted above both the definition of tenancy and of tenancy agreement in the *Act* stipulate the aspect of possession is a prerequisite to a tenancy relationship. As such, I find the matter of possession to be of paramount importance in this case.

Black's Law Dictionary, 7th Edition defines possession as:

1. The fact of having or holding property in one's power; the exercise of dominion over property;
2. The right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object;
3. Something that a person owns or controls.

I find the language of the agreement is very specific in that it refers to the applicant's ability to "use" a portion of the license area; to the respondent's retention of rights of access and placement of float homes within the entire license area; and to the explicit statement that the agreement shall not be interpreted as granting any interest in the license area.

License is defined in Black's as "a revocable permission to commit some act that would otherwise be unlawful; esp., an agreement that it will be lawful for the licensee to enter the licensor's land to do some act that would otherwise be illegal."

I find the applicants have not been granted possession of a manufactured home site and that the respondent has entered into licenses for use contracts with each of the applicants and not tenancy agreements as defined under the *Act*. As licenses for use do not meet the definition of a tenancy, under the *Act*, I find the *Act* does not apply to these matters.

Conclusion

As a result of my findings above, I decline jurisdiction to resolve these disputes.

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: August 19, 2010.

Dispute Resolution Officer