



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened as the result of the tenants' application for dispute resolution under the *Manufactured Home Park Tenancy Act* (the "Act"), seeking a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The tenants appeared and gave affirmed testimony.

The tenants testified and supplied evidence that each listed landlord was served with the Application for Dispute Resolution and Notice of Hearing via registered mail on February 23, 2012. The tenants submitted that the registered mail sent to landlord SBRC was collected, and that the registered mail to WP went unclaimed.

I find the landlords were served in a manner complying with section 82 of the *Act* and the hearing proceeded in the landlords' absence.

The tenants were provided the opportunity to present their evidence orally and in documentary form.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the tenants entitled to a monetary order and to recover the filing fee?

Background and Evidence

The original name of the business was IBRP; however the name of the business changed to the above listed name in the fall of 2010, but with the same owners.

The tenants submitted that they moved their 5th wheel trailer onto the premises of the Park in 2003, when it was known by another name. The agreement was for a seasonal parking pad where they would occupy their trailer from April 1 until October 1 of each year; however rent was on a yearly basis and the trailer remained on the home site year round. The document they signed was labelled a License to Occupy.

Despite this, in 2008, the Supreme Court of British Columbia ruled that this Park was a Manufactured Home Park and fell under the *Manufactured Home Park Tenancy Act*.

The tenants submitted a copy of that Supreme Court judgment.

On January 1, 2010, the tenants received a notice of rent increase under the *Manufactured Home Park Tenancy Act* from the landlord, approved by the Residential Tenancy Branch ("RTB"), which increased the tenants' yearly rent to \$3135.00.

According to the tenants, they received another notice in December 2010 that the yearly rent of \$3135.00 was increasing to \$5100.00, which could be paid yearly or monthly in the amount of \$425.00, a monthly increase from \$261.25 from 2010.

The tenants contended that the notice of increase was not on a proper RTB form for a Manufactured Home Site. Despite this, the tenants paid the increased rent, paying on a monthly basis for January through June 2011, as they sold the trailer at the end of June 2011.

In 2011, there was again another dispute as to whether or not the Park fell under the *Manufactured Home Park Tenancy Act*, with the matter again involving the Supreme Court.

According to the tenants, the landlords submitted that if the Supreme Court ruled that the Park was under the jurisdiction of the *Manufactured Home Park Tenancy Act*, the tenants would be refunded the amount of the rent increase. The tenants submitted a copy of that letter from the landlords. As well, the tenants submitted a copy of the Supreme Court judgment from 2011.

The tenants' monetary claim is in the amount of \$982.50, the amount of overpayment for six months paid in 2011 as the landlords reneged on their promise to repay the overpayment.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In the absence of the landlords, who were duly served the Notice of Hearing, I prefer the evidence of the tenants.

A review of the tenants' evidence shows that the issue of whether or not this Park falls under the jurisdiction of the *Manufactured Home Park Tenancy Act* was decided by the Supreme Court of British Columbia in *Lang v. British Columbia (Residential Tenancy Arbitrator)*, 2008 BCSC 1707, with the Court deciding that the *Manufactured Home Park Tenancy Act* (the "Act") applied to this RV Park.

The matter of jurisdiction of the *Manufactured Home Park Tenancy Act* over this landlord was again decided in *Cathedral Ventures Ltd. et al. v. Hyssop*, with a decision that the Act applies to this Park.

It should also be noted that tenancy issues related to this park have previously been heard and ruled on by Dispute Resolution Officers under the jurisdiction of the *Manufactured Home Park Tenancy Act*.

I therefore find that the Act applies to this dispute.

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

Sections 34 and 35 of the *Act* state that a landlord may not increase the rent unless it is in the proper form.

I find the document signed by the parties on December 5 and 6, 2010, purporting to designate this tenancy as a license to occupy, and increasing the monthly pad rent to \$425.00, is not in the proper form and is therefore invalid and of no force or effect.

Conclusion

As I have found that the rent increase imposed on the tenants was invalid and of no force or effect, I grant the tenants' application for a refund of the amount of the overpayment, in the amount of \$982.50.

I also find the tenants are entitled to recover the filing fee of \$50.00.

I find the tenants are entitled to a monetary order pursuant to section 60 of the Act in the amount of \$1032.50, comprised of rent overpayment in the amount of \$982.50 and recovery of the filing fee of \$50.00.

I am enclosing the monetary order for \$1032.50 with the tenants' Decision. This order is a legally binding, final order, and it may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement should the landlords fail to comply with this monetary order.

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: May 07, 2012.

Residential Tenancy Branch