



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, OLC, RPP, LRE, OPT, AAT

Introduction

This hearing was scheduled in response to the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / an order instructing the landlord to return the tenant's personal property / an order suspending or setting conditions on the landlord's right to enter the rental unit / an order of possession of the rental unit / and an order permitting access to (or from) the unit or site for the tenant or the tenant's guests.

Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the dispute falls within the jurisdiction of the Act, Regulation or tenancy agreement.

If the dispute falls within the jurisdiction of the Act, Regulation or tenancy agreement, whether the tenant is entitled to any of the above.

Background and Evidence

The landlord takes the position that the relationship between himself and the tenant is not a landlord – tenant relationship. However, for the purposes of this decision, the applicant(s) and the respondent(s) will be referred to as the “tenant” and the “landlord.”

The parties agree that in either late April or early May 2012, the tenant paid the landlord \$400.00. In exchange, the tenant had 1 month's access to the landlord's property in order to store 4 vehicles in need of certain repairs. The payment also gave the tenant access to electrical power for the month via an extension cord from a small house located on the property; the landlord takes the position that the electricity would be used by the tenant for power tools and for lighting while the tenant worked on his vehicles.

During the hearing the tenant stated that cooking on the bus would be by way of gas, not electricity.

Finally, payment gave the tenant access to toilet facilities in the small house for that same month. No security deposit was collected. It was not until on or about May 29, 2012, when the tenant's vehicles were brought to the property. As 1 of the tenant's vehicles has now been removed, only 3 vehicles presently remain on the property.

The landlord was absent on the occasion when the vehicles were brought to the property. When the landlord returned he found that the vehicles had not been positioned at the particular location which had been mutually agreed. The tenant states that while he and the landlord had indeed agreed on a particular location, the vehicles were physically unable to be positioned in that way when they were delivered.

Thereafter, the landlord claims that he received notification from a bylaw compliance officer representing the local government authority, instructing him to relocate the vehicles. Following this, as the landlord was unable to establish contact with the tenant, the landlord undertook himself to relocate the vehicles elsewhere on the property. The tenant claims that the vehicles sustained damage as a result of the landlord's efforts, and the landlord appears to acknowledge that some damage may have occurred.

The tenant states that he gave the landlord notice of his intent to remove all vehicles from the property by the end of June 2012. However, no funds beyond the initial \$400.00 payment have been given to the landlord. The landlord refuses to permit the remaining 3 vehicles to be removed until agreement has been reached around additional payment for the tenant's use of the property, the electricity and the toilet facilities. Despite this, the landlord stated that he has no objection to the tenant entering the property in order to remove personal belongings from the vehicles.

One of the vehicles remaining on the property is a bus. The tenant claims that he lived in the bus on the landlord's property from May 28 to June 28, 2012, with the exception of 1 night when he stayed inside the small house on the property, within which the toilet facilities are located. There is conflicting testimony around whether the parties agreed that the tenant would occupy the bus as living accommodation while it was stored on the property; the tenant claims that it was understood he would be living in the bus, whereas the landlord's understanding is that the tenant might stay overnight in the bus on limited occasions after working on the vehicles late into the night. In any event, the tenant argues that the small house was unsuitable for occupation ("black & white mold," "rat & mouse feces," "the toilet doesn't work").

The toilet in the small house is not fully functioning, and must be flushed by having water poured into the toilet bowl from a bucket which can be filled from a tap inside the bathroom. Again, the landlord takes the position that access to the toilet in the small house was provided as an added convenience to the tenant's use of the property, which was for storage of 4 vehicles. Further, the landlord claims there was no agreement pursuant to which the small house was to be occupied as a residence. As to agreements, none are in writing.

While the parties exchanged views during the hearing in regard to a possible resolution of the dispute, no mutually agreeable settlement was able to be reached. However, it was agreed that the landlord will undertake to contact tenant's witness "BM" in order to attempt to schedule a mutually agreeable time and place for a meeting; those in attendance to such a meeting would be male landlord "RBB," female landlord "RB," tenant "MS," and tenant's witness "BM." The purpose of such a meeting would be to further explore the ways in which the parties might resolve the dispute between them.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 1 of the Act sets out certain definitions, in part, as follows:

"rental unit" means living accommodation rented or intended to be rented to a tenant;

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of

common areas and services and facilities, and includes a licence to occupy a rental unit;

“security deposit” means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property,...

Based on the documentary evidence and testimony of the parties, I find there is insufficient evidence to support the existence of a landlord – tenant relationship in the circumstances of this dispute. Specifically, I am unable to conclude that the small house on the property was intended by the landlord to be possessed or occupied by the tenant as living accommodation. Indeed, as earlier noted, the tenant acknowledged that he only stayed overnight in the house on one occasion. Further, there is no evidence that the tenant expressed any concern about the condition of the small house to the landlord during the period from May 28 to June 28, 2012, which one might expect him to have done if the agreement was that he had paid to occupy and live in the small house. I find that agreement around use of the small house was limited to the toilet as required, and to electricity provided by way of an extension cord from the small house.

I now turn my mind to the *Manufactured Home Park Tenancy Act*, pursuant to which section 1 sets out the following definitions, in part, as follows:

“manufactured home” means a structure, whether or not ordinarily equipped with wheels, that is

- (a) designed, constructed or manufactured to be moved from one place to another by being towed or carried, and
- (b) used or intended to be used as living accommodation;

“manufactured home park” means the parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located;

“manufactured home site” means 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;

I find that the tenant’s bus does not fall within the statutory definition of a “manufactured home.” Specifically, even while the tenant might use the bus as living accommodation, I

find that the bus is not “designed, constructed or manufactured to be moved from one place to another by being towed or carried.”

On a balance of probabilities, I further find that the landlord did not give the tenant access to the property on the understanding that the tenant would occupy the bus as living accommodation.

Conclusion

As the dispute does not fall within the jurisdiction of the Act, the Regulation or a tenancy agreement, or the *Manufactured Home Park Tenancy Act / Regulation*, the application is hereby 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 Act.

Dated: August 1, 2012.

Residential Tenancy Branch