



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SWAN LAKE RV PARK & CAMPGROUND
and [Applicant name suppressed to protect privacy]

DECISION

Dispute Codes: OLC, PSF, FF, O

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) made by the Applicants on January 30, 2015 for: the Respondent to comply with the *Manufactured Home Park Tenancy Act* (the “MHPTA”), regulation or tenancy agreement; for the Respondent to provide services or facilities required by law; to recover the filing fee; and for “Other” issues, which the Applicants identified in the details section of the Application to determine jurisdiction in this case.

Both Applicants, an agent for the Respondent, the park manager and the Respondent’s legal counsel appeared for the hearing. All participants provided affirmed testimony apart from the Respondent’s legal counsel who appeared in the capacity of a support advocate for the Respondent’s agent.

The Respondent’s agent confirmed receipt of the Applicant’s Application and their documentary evidence which was personally served to another agent of the Respondent on February 3, 2015.

The Respondent also provided documentary evidence which was provided to the Applicants and the Residential Tenancy Branch two days prior to this hearing. The female Applicant explained that they did not have enough time to review the Respondent’s evidence and did not consent to the Respondent using their written evidence. The Applicants also refused the motion for adjourning the hearing to allow them more time to consider the Respondent’s documentary evidence.

The Respondent’s agent explained that the park manager had been away on vacation and did not arrive back to the park until February 28, 2015. Therefore, this was the earliest time they could meet in order for them to assemble their evidence. The Applicants argued that the Respondent’s agent had served them with documents relating to a small claims court action against them since the time they had served the

Respondent with their Application. Therefore, the Applicants submitted that the Respondent had sufficient time to prepare and assemble documentary evidence.

After considering the submissions of both parties in relation to whether the Respondent's documentary evidence should be permitted during the hearing, I determined that the Respondent had failed to meet the deadlines set out in the Rules of Procedure for submitting evidence to both the Applicants and the Residential Tenancy Branch. I found the Respondent's documentary evidence did not hinge on the park manager and the fact that the park manager was on vacation was not a sufficient reason for me to delay the proceedings or allow the Respondent's documentary evidence to be admitted into the hearing for consideration. Therefore, I explained to the parties that I would not be considering the Respondent's written evidence in making my decision. However, I explained to the Respondent's agent that he was not barred from providing oral testimony during the hearing.

At the outset of the hearing, I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and make submissions to me. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Before I moved to consider the evidence of the parties in relation to the Applicants' Application, I determined that I must first consider whether this matter falls under the jurisdiction of the Act.

Background and Evidence

The female Applicant testified that they appeared at the R.V. Park and Campground (the "Campground") and rented the site from the park manager on May 11, 2014. The Applicant testified that they paid the Respondent \$572.25 as rent for the site and this included sales tax and all utility hook ups. The Applicant explained that they were looking for a long term rental for an indefinite stay. The Applicant explained that at the end of June 2014, they left the park with their fifth wheel to go working in the logging

industry. They did not return until October 2014 after which they have remained resident in the Campground; however during the time they were away they continued to pay rent to the Respondent for the site and had left their boat in the park.

The Applicants explained that their rent went up in November 2014 because this was the park's winter rate which the Applicants paid. The female Applicant confirmed that no tenancy agreement had been signed and they received mail to the address documented on their Application as their mailing address.

The Applicant was asked about a document they had provided into written evidence which they referred to as a receipt of rent. The document shows a reservation number for the Campground and shows a start date of November 1, 2014 to February 1, 2015 and that the total amount of rent for this period was \$1,874.25. The document shows three debit payments made by the Applicants on November and December 2014 and January, 2015 in the amount of \$624.75 per month.

The document also gives information on the site indicating that it is "Back in long term". The Applicant explained that they had tried to pay rent for February 2015 but the Respondent refused to accept it because they claim the tenancy has now ended. The Applicants asserted that they have not been provided proper notice to end the tenancy even though it is their intention to leave the Campground in the next five days.

The Respondent's agent testified that he had been consistent in defining the Applicants' accommodation as being on a R.V. Park and Campground. The Respondent's agent submitted that the local regional district had enforced the removal of permanent residents from the park to bring it back into zoning conformity as a campground only. The Respondent's agent submitted the zoning Bylaw is limited to accommodations for 182 days per year and therefore this is what they term as "long term".

The Respondent's agent submitted that they do not allow campers into the park that do not have a secondary permanent resident address which was provided by the Applicants when they first arrived at the park. The park manager confirmed that he had been given a directive that they were not allowed to give the impression that full time residency could be taken at the Campground. The Respondent's agent testified that the Applicants had misappropriated accommodations by providing a residential address when they first arrived and they accepted the address provided in May 2014 as their permanent address. The Respondent's agent also confirmed that no camper is allowed to use the address of the Campground as their mailing address.

The park manager testified that after they had been served with the Applicants' Application they had collected six signatures from other campers in the Campground

who all verified that when they made their reservations they were not to use the Campground as their residence.

In support of this, the Respondent's agent referred to the document provided by the Applicant's which they termed as a rent receipt. The Respondent's agent submitted that the very document the Applicants rely on also contains a clause which states in part the following:

"ATTENTION: This property is privately owned. The camper accepts camping privileges with the understanding that he or she does hereby release the Campground, its officers and employees of all liability for loss or damage to the property and injury to his or her person arising out of the use of the camping facilities..."

[Reproduced as written]

The Respondent's agent testified that when the Applicants left the Campground to work, they did not pay rent as they had testified. The Respondent's agent stated that on August 2, 2014 the Applicants checked out and did not pay rent. The Applicants had a new reservation set up when they left to return on August 12, 2014. However, prior to their return on this date, the reservation was cancelled and the Applicants did not return until October 1, 2014 at which point they rented the site under a new reservation. The Respondent testified that the Applicants also have left the Campground during these periods for long weekends and their site was rented to other campers for the time they were away. The park manager testified that the Applicants had not paid rent for the periods they were away. The Respondent's agent submitted that the Applicants entered in and out of the Campground under multiple reservations which were recorded.

The Respondent's agent and the Respondent's legal counsel submitted that they are of the opinion that this matter does not fall within the jurisdiction of the Act because this is a licence to occupy the site. The Respondent's agent argued that no tenancy agreement has been formed or was intended to be formed with the Applicants and there are not any long term Applicants in the park due to the restrictions of the zoning laws. The Respondent's agent submitted that they provide all campers with temporary accommodation and there are signs around the park that indicate that it is a Campground. The Respondent's agent referred to a photograph submitted by the Applicants which stated "Welcome campers" and "I will be by later to meet you + register". The Respondent's agent submitted that this was evidence that they did not enter into tenancy agreements with campers when they come to stay in the Campground.

The Respondent's agent submitted that they provide campers with camping privileges and that any reservations made have to have an end date to ensure that campers are not given the impressions that they can stay indefinitely.

The Applicants rebutted the Respondent's agent's testimony submitting that there were long term renters in the Campground which showed that the Respondents had long term tenancies with other campers and were not complying with the zoning Bylaws. The Applicants argued that at no point were they told that their accommodation would be temporary.

The Applicants were asked whether they paid rent during the times they were not present in the Campground. The Applicants testified that there was one month when they left the Campground during which they did not pay rent. When the Applicants were asked whether they were away for the long weekends as testified to by the Respondent's agent, the Applicants were unable to confirm this without examining their previous records.

Analysis

The Applicants filed an Application and checked off that they were applying under the MHPTA; however, the Respondent's agent and Legal Counsel argued that the matter relates to an R.V. Park and Campground and does not fall under the Act. Therefore, my determination of jurisdiction will be dictated by the Act.

Section 2 of the Act stipulates that the Act applies to tenancy agreements, manufactured home sites and manufactured home parks. The Act does not apply to an occupation of land that under the common law would be considered a license to occupy. Therefore, I must determine if the parties have entered into a tenancy agreement under Section 2 of the Act or if this case is a license to occupy.

The Act defines a **"tenancy agreement"** as an agreement, whether written or oral, express or implied, between a tenant and a landlord respecting possession of a manufactured home site, use of common areas and services and facilities.

Policy Guideline 9 to the Act clarifies the factors that distinguish a tenancy agreement from a license to occupy. The guidelines states in part:

"A license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or "licensee", is given permission to use a site or property, but that permission may be revoked at any time. Under a tenancy agreement, the

tenant is given exclusive possession of the site for a term, which can include month to month. The landlord may only enter the site with the consent of the tenant, or under the limited circumstances defined by the Manufactured Home Park Tenancy Act. A licensee is not entitled to file an application under the Manufactured Home Park Tenancy Act.

If there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created, unless there are circumstances that suggest otherwise. For example, a park owner who allows a family member to occupy the site and pay rent, has not necessarily entered into a tenancy agreement. In order to determine whether a particular arrangement is a license or tenancy, the arbitrator will consider what the parties intended, and all of the circumstances surrounding the occupation of the premises.

Some of the factors that may weigh against finding a tenancy are:

- *Payment of a security deposit is not required.*
- *The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.*
- *The occupier pays property taxes and utilities but not a fixed amount for rent.*
- *The owner, or other person allowing occupancy, retains the right to enter the site without notice.*
- *The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.*
- *The parties have agreed that the occupier may be evicted without a reason, or may vacate without notice.*
- *The written contract suggests there was no intention that the provisions of the Manufactured Home Park Tenancy Act apply.*

The arbitrator will weigh all of the factors for and against finding that a tenancy exists, even where the written contract specifies a license or tenancy agreement. It is also important to note that the passage of time alone will not change the nature of the agreement from license or tenancy.

Tenancies involving travel trailers and recreational vehicles

Although the Manufactured Home Park Tenancy Act defines manufactured homes in a way that might include recreational vehicles such as travel trailers, it is up to

the party making an application under the Act to show that a tenancy agreement exists. In addition to any relevant considerations above, and although no one factor is determinative, the following factors would tend to support a finding that the arrangement is a license to occupy and not a tenancy agreement:

- *The manufactured home is intended for recreational rather than residential use.*
- *The home is located in a campground or RV Park, not a Manufactured Home Park.*
- *The property on which the manufactured home is located does not meet zoning requirements for a Manufactured Home Park.*
- *The rent is calculated on a daily basis, and G.S.T. is calculated on the rent.*
- *The property owner pays utilities such as cablevision and electricity.*
- *There is no access to services and facilities usually provided in ordinary tenancies, e.g. frost-free water connections.*
- *Visiting hours are imposed.”*

[Reproduced as written]

I have carefully considered all of the evidence provided by both parties in relation to the issue of jurisdiction and make my findings based on the balance of probabilities. In making my findings I have considered how this situation arose from the onset in May 2014 rather than focusing on the current agreement/reservation the parties find themselves in.

The Applicants confirmed that they do not have mail going to the Campground as this is being sent to a mailing address they have elsewhere. The Applicants evidence suggests that they did not reside at the Campground for a continual period to date. This would have suggested that a tenancy had been established between the parties. Rather, I find that the evidence suggests that the Applicants left the Campground of their own accord for short periods of time to work in the logging industry without giving any written notice to the Respondent that would have been required under the Act.

Furthermore, the Respondent did not require any written notice from the Applicants when they chose to leave the Campground. Instead, I find the understanding between the parties was that the Applicants were free to leave the Campground at any time and not pay rent for the time they were not residing in the Campground; in return, the Respondent was free to rent out the Applicants' site to other campers in their absence under a different reservation number.

While the Applicants were unsure whether they had left the Campground during the long weekend holidays as suggested by the park manager, the Applicants did confirm they were away for a whole month in September 2014 without paying rent. Therefore, I find it plausible that the Respondent would have rented the Applicants' site to other campers during the Applicants' absences, without any dispute from the Applicants, in order to cover the cost of the vacant site in the Campground during these busy periods.

Therefore, I find the foregoing to be an important and determinative factor which points to the fact that a tenancy had not been established by the parties for this site in the Campground. I base this finding on the fact that there were far too many in and outs and multiple reservations made by the Applicants that would suggest that they had long term residency in the Campground.

The Applicants argued that there were other campers in the Campground that had long term tenancies with the Respondent. The Applicants submitted that this proved that they were not complying with the zoning Bylaws which prevent them from having a manufactured home park. The Applicants provided no corroborating evidence that there were other campers in the Campground that had tenancies which would show the Respondent was not in compliance with the zoning Bylaws. However, even if they had, Section 57 (2) of the Act stipulates that the director must make each decision or order on the merits of the case as disclosed by the evidence admitted.

The Applicants confirmed that they did not pay a fixed amount of rent while they resided at the Campground. Instead they paid one rate for the summer period and an increased rate during the winter period. Under the Act these amounts would be subject to the rent increase provisions; however, no issues were raised regarding this by either the Applicants or the Respondent. As a result, I find that a fixed amount of rent had not been established from the onset of the Applicant's agreement to occupy the property. Had that been the case it would have pointed to a tenancy agreement being established between the parties. Furthermore, the Applicants confirmed they paid sales tax on the rent payable.

The Applicants provided a reservation receipt which they termed as rent receipt. I have examined this document and I find that it is not sufficient evidence that this is a tenancy agreement or that the document shows a tenancy was established. While the document does indicate a start date of November 1, 2014 and an end date of February 1, 2015, I find that this is a document that provides the Applicants with information regarding their reservation and that any point during this time the Applicants were free to leave the Campground of their own free will without giving any prior written notice, as they had done so on previous occasions.

I accept the Respondent's agent's and park manager's oral testimony that the site provided to the Applicant is located in a campground. This is evidenced by the Applicants' written evidence which shows a copy of a sign posted in the Campground which states "Welcome Campers." I find the Applicants failed to provide supporting or corroborating evidence to dispute the Respondent's agent's submission that the Campground was not zoned for a manufactured home park.

In this case, the burden to prove that a tenancy agreement existed between the parties rests with the Applicants. Notwithstanding the Applicant's arguments, I find that the Applicants have failed to satisfy me with sufficient evidence that they have a tenancy agreement with the Respondent and that the Act applies in this case.

Based on the foregoing, I must decline jurisdiction in this matter. The Applicants are at liberty to seek alternative legal remedies to address their dispute.

Conclusion

For the reasons set out above, I decline jurisdiction in this matter.

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: March 06, 2015

Residential Tenancy Branch

