Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Knutsford RV Park
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

DRI, MNDC, OLC, ERP, PSF

Introduction

This hearing was scheduled in response to the tenants' application for dispute resolution in which the tenant has disputed an additional rent increase and requested compensation for damage or loss under the Act, an Order the landlord comply with the Act, that the landlord make emergency repairs and that the landlord be Ordered to provide services or facilities required by law.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the included evidence and testimony provided.

Preliminary Matters

The tenant supplied evidence that indicated the nature of this rental situation and jurisdiction is in dispute. Therefore, the parties were told that I would first deal with the question of jurisdiction. I would then accept testimony in relation to the claim made by the tenant. The tenant understood that if jurisdiction was declined the claim could not proceed.

The landlord confirmed receipt of the tenants' hearing documents and evidence in early August 2015. The tenant made an additional 10 page evidence submission to the Residential Tenancy Branch (RTB) on August 24, 2015. The evidence was mailed to an incorrect address for the landlord and was then mailed again in late August. The landlord had not received that evidence.

The late evidence included a request to amend the application, increasing the monetary claim. The tenant had not amended the application and served the landlord with a copy of an amended application prior to the hearing. Any amendment would be required, pursuant to section 89 of the Act, by registered mail.

I considered Rule 8.4 of the RTB Rules of Procedure and determined that to allow an amendment at the hearing would prejudice the landlord and result in an adjournment. Therefore, I decline the request to amend; the tenant may submit another application if jurisdiction is established.

The parties confirmed that the tenant vacated the property on August 16, 2015. Therefore the portions of the application requesting repair and services are no longer relevant.

Issue(s) to be Decided

Has the landlord imposed an additional rent increase?

Is the tenant entitled to compensation in the sum of $400.00 for loss of internet service?

Jurisdiction

The parties agreed that on April 8, 2014 the tenant moved a 5th wheel trailer onto site #98, on the landlord's property. The landlord said the tenant would have signed an agreement for rental. The tenant said she did not sign a document.

The landlord read from the campsite agreement that he said all renters' sign. The agreement indicated that any violation could result in termination of the agreement and that services and removal of the renter were at the discretion of the owner.

There was no dispute that the rent was paid in 30 day increments and that GST was applied to the payments. Rent included water, sewer and wireless internet service. A security deposit was not paid.

The parties agreed that in October 2014 the tenant moved her trailer to a different site on the property where the water lines were buried more deeply. This would help to ensure that the water line would not freeze during the winter months. The landlord said that the tenant was responsible for wrapping heat tape around the water line; the tenant said that the entire line was insulated and heat tape was not required.

The landlord maintained the grass and completed repairs in all areas directly outside of the trailers on the property and notice of entry to the property was not given when working near the tenants' RV. The tenant said the landlord did not give notice when they intended to come on to her site.

The tenant did not pay property taxes and utilities.

There was no family relationship with the tenant.

The landlord said that the property is zoned as a campsite, not a manufactured home park. Renters can remain for very short stays and at times some renters stay over the winter. The landlord prefers not to have winter renters as hydro use escalates in those months. In October 2014 the rent increased to allow for increased hydro consumption. The rent then decreased in May 2015, as the use of hydro decreases commencing that month. The landlord said that anyone in the campsite over winter pays this increased fee.

The tenant said that this was a tenancy; that the water services were insulated and there was no agreement as to how the rental could be ended. The tenant's 5th wheel trailer had skirts that could be used in the winter months. The trailer has not been used as anything but a home for the tenant and if moved the tenant must hire a RV moving

company. The tenant said the landlord kept coming to the site and that she had little area for her own use.

Section 2 of the Act provides:

> ***2*** *(1) Despite any other enactment but subject to section 4* [what this Act does not apply to]*, this Act applies to tenancy agreements, manufactured home sites and manufactured home parks.*

The Act defines a manufactured home as:

> ***"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*

From the evidence before me I find that the 5th wheel occupied by the tenant meets the definition of manufactured home; it is not intended for use as living accommodation but is used in that manner and can be moved.

I have considered RTB policy *#9 Tenancy Agreements and Lisenses to Occupy* which establishes the criteria that should be considered by an arbitrator when jurisdiction is in question.

Policy suggests that a license to occupy is a living arrangement, rather than a tenancy. Under a license to occupy the person has permission to use the property but that permission may be revoked at any time. Unlike a tenancy, a license to occupy does not fall within the jurisdiction of the *Manufactured Home Park Tenancy Act* and an application made for dispute resolution will not succeed.

I must consider what was intended when the parties entered into the agreement that allowed the tenant to place her 5th wheel trailer on the property. The following factors that should be weighed 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; and
- The written contract suggests there was no intention that the provisions of the *Manufactured Home Park Tenancy Act* apply.

There was no security deposit paid; however deposits are not a requirement of the *Manufactured Home Park Tenancy Act*.

I find that the landlord did have access to and control over the sites. There was no evidence before me that the tenant had any responsibility for maintenance of a site where her 5th wheel trailer was parked. The tenant did not dispute the landlords' submission that they carried out all service and maintenance throughout the property. In a tenancy the tenant would normally be responsible for maintenance of the rented site, such as gardening and cutting lawn. There was no evidence before me that the tenant was given exclusive use of a rental site that prohibited access by the property owner.

The tenant did not pay property tax or utilities and the rent was increased in consideration of seasonal cost increases and was not fixed.

There was no family or business relationship between the parties.

The rental agreement read by the landlord set out the rules for the rentals. A tenancy agreement was not signed. From the evidence before me I find that the tenant was bound by these rules, that she paid rent according to the rules and that there was no agreement or meeting of the minds that this was a tenancy in a manufactured home park.

When considering jurisdiction in relation to RV's the person making the application for dispute resolution must prove a tenancy agreement exists. Although no one factor is determinative, policy #9 suggests 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; and
- Visiting hours are imposed.

I have determined that the home used by the tenant is intended for recreational use; it meets the definition of manufactured home under the Act only because that is how the tenant uses the 5th wheel trailer.

There was no evidence before me proving the property is zoned as a manufactured home park; therefore, based on the landlords' submission I find it is zoned as a campsite. Therefore, I find that the 5th wheel trailer was located in a campsite and not a manufactured home park.

There was no dispute that rent was paid in 30 day increments and that GST was calculated. The tenant also confirmed that she does not pay utilities. Cablevision is not available at the property.

In relation to frost-free water services, I find that even if the tenant did not place heat tape on her water line, that this alone does not support the tenants' submission that this rental arrangement was a tenancy.

The tenant did not dispute that visiting hours applied to the property; the landlord said that no visitors were allowed after 10 p.m.

Therefore, from the evidence before me I find on the balance of probabilities, that the tenant has failed to prove that this was a tenancy. I find that the parties entered into a license to occupy for rental of a campsite.

Therefore, jurisdiction is declined.

This decision is final and binding and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 55(1) of the *Manufactured Home Park Tenancy Act.*

Dated: September 11, 2015

Residential Tenancy Branch