Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BELAIR CEDAR RESORTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: DRI, MNDC, OLC, FF, O

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") made by the Applicants on September 9, 2015. The Applicants applied for the following reasons: to dispute an additional rent increase; for money owed or compensation for damage or loss under the *Manufactured Home Park Tenancy Act* (the "Act"); for the Respondent to comply with the Act; to recover the filing fee; and "Other" issues which the parties confirmed was a determination on whether jurisdiction of Act applied in this case.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. I have considered the evidence provided by the parties in this case. However, I have only documented that evidence which I relied upon to making findings in this Decision.

Preliminary Issues

Both Applicants and an agent for the Respondent Company appeared for the hearing and provided affirmed testimony. The Respondent's agent confirmed receipt of the Application by personal service. The parties also confirmed receipt of each other's documentary evidence provided prior to the hearing. However, the Applicants submitted that the Respondent's evidence had been served to them one day late outside of the time limits set by the Rules of Procedure.

The Respondent's agent stated that he had served his documentary evidence by express mail to the Applicants. However, the Respondent's agent had failed to account for the five day deeming provisions rule stipulated by the Rules of Procedure which was the reason why it was late. The Respondent submitted that his documentary evidence was essential in proving that there was no jurisdiction in this matter. As this was an important issue for me to consider before I could deal with the Application, I considered

adjourning the proceedings to allow more time for the Applicants to consider the evidence and provide rebuttal evidence. However, the Applicants explained that they had sufficiently examined the Respondents' evidence and wanted to proceed with the hearing consenting to the Respondent's evidence being considered in this Decision.

The Applicants then stated that they wanted to submit further evidence in relation to their Application for their monetary claim and some Supreme Court decisions. I again offered the Applicants an opportunity to adjourn the hearing to provide this evidence, but the Applicants decided to proceed with the hearing in the absence of these documents.

Issue to be Decided

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

Background and Evidence

As the Applicants bear the burden to prove jurisdiction in this matter, I asked them first to present their evidence. The male Applicant led the testimony. The Applicant testified that he was the previous owner of the park from April 2010 to April 2015. After the ownership of the park was transferred on April 27, 2015 to the new owners, (which was the Respondent company), the Applicants resided in the owner's suite of the motel located in the park for a week. In exchange the Applicants helped the Respondent's agent with the transition of the park operations.

The Applicant explained that when they were owners of the park, they owned a 5th wheel trailer (the "trailer") which sat on one of the RV sites in the park. A week after the park had sold the Respondent's agent needed use of the owner's suite they were residing in. Therefore, they asked the Respondent's agent whether they could move into their trailer and rent the site. The Applicant testified that they had a verbal agreement with the Respondent's agent to rent the site on a yearlong lease.

The Applicant referred to a receipt which they provided into evidence. The receipt shows an arrival date of April 27, 2015 and a departure date of June 29, 2016. The Applicants attempted to explain the complex amounts and dates that were recorded on the receipt. The Applicant submitted that some of the dates were incorrect because they had been entered incorrectly into the computer system but the verbal agreement between the parties was that the Applicants would rent the site for $500.00 per month

which was payable on the first day of each month. The date of the receipt shows April 22, 2015 and also documents the dates the Applicants had made payment. I asked the Applicants what was included in this amount and the Applicants responded stating that tax was not included and they have water and sewer hookup and were charged separately for the electricity by the Landlord.

The Applicants testified that they paid $66.64 for prorated rent for the remainder of April 2015 and this was paid on April 22, 2015. The Applicants then paid $500.00 for May 2015 rent on May 27, 2015, and another $500.00 on June 30, 2015 for June, 2015 rent. The Applicants testified that they left to attend a funeral for the first week of June 2015. During this time, the trailer was left in the park. On their return, they received an email informing them that their new site rent for July 2015 had been established and was going to increase over the summer months. The Applicants provided a copy of the email which details two options the Applicants were given; one option was to pay the seasonal amounts which differed for each month; the other option was to sign an annual lease agreement for a flat rent rate of $475.00

The Applicant testified that they wanted to pursue the second option because it involved a longer term lease. However, when they spoke to the Respondent's agent about this, they were informed that the long term lease option was no longer available. The Applicant testified that they had no choice but to pay the higher rent amounts for the months of July, August and September 2015. The Applicants testified that on top of these three months of increased payments they made, they had to pay GST and hydro for each month. However, when they paid rent for the months of April, May and June 2015, GST was not included.

The Applicant testified that they made the payments but were not happy about this because the Respondent was not allowed to increase the rent in this manner as it was contrary to the Act. As a result, the Applicants left the park at the end of September 2015 after being asked to do so by the Respondent's agent. The Applicants now seek to recover monetary losses and unauthorised additional rent increases from the Respondent.

The Applicants confirmed that no written tenancy agreement had been signed by the parties and that the tenancy was an oral tenancy for a fixed term of one year. The Applicants testified that the trailer was the only place they had to live and do not use the trailer for recreational purposes as they have no other permanent residence.

The Applicant submitted that the park was a manufactured home park and that there are plenty of residents residing there on a full time basis. The Applicants explained that

the trailer was their primary residence as they have a deck attached to the trailer with flower pots on it which would not be there if it was a recreational vehicle. The Applicants provided photographs of the trailer into evidence. The Applicants also provided an audio recording into evidence where the Applicants are having a vernal argument with a park reception staff member in September 2015 as to whether the Act applied in their case.

The Respondent's agent testified that this is not a manufactured home park and neither is it zoned as one. The Respondent's agent submitted that the property is a holiday resort which has a motel and RV park for holiday makers who are charged different rental rates which vary from season to season. The resort is for the use of temporary vacation or travel accommodation and not for use as a permanent residence.

The Respondent's agent submitted that the Applicant's evidence hinged on a verbal agreement that a tenancy exists between the parties. The Respondent's agent denied this. He explained that he bought the park from the Applicants with the chattels because it had gone into foreclosure by them. When he took over the park, the Applicants asked him whether they could remain in the park as they had nowhere else to go. The Respondent stated that he allowed them to stay in the owner's suite of the motel in exchange for his help to oversee the transition of the park operation.

The Respondent's agent testified that after four to five days in, the Applicants had finished in their capacity to help them with the running of the park and there was no further requirement for their help. The Applicants asked the Respondent's agent whether they could stay in their trailer which was still located in the park as they still had nowhere else to go. The Respondent's agent testified that he allowed the Applicants to stay in the trailer because he felt sorry for them and saw that he could still find some use for them.

However, the Respondent's agent submitted that at no time was a tenancy agreement entered into. If the Respondent had intended for there to be a tenancy he would have completed a proper written tenancy agreement with the Applicants. The Respondent's agent submitted that instead he allowed the Applicants to stay in the trailer providing they pay the seasonal rental amount of $500.00 established at that time. The Respondent's agent stated that he was taking over the running of the park and had not yet calculated the proper amounts they would be charging to all their customers in the coming month. The Respondent's agent stated that the $500.00 included GST and at no time did her enter into any tenancy with the Applicants or give them a fixed length of one year to stay in the property. The Respondent's agent stated that they no longer needed the services of the Applicants and therefore had given them until the end of

September 2015 to leave providing they paid the seasonal rental amount for those months.

The Respondent's agent was asked to respond to the Applicants' evidence in relation to the trailer. The Respondent's agent testified that the trailer belonged to the Applicants and was already there when the Applicants were the owners of the park which is why it had a deck attached to it. The Respondent's agent explained that the park rules do not allow such types of structures to be attached to recreational vehicles and submits that the Applicants' deck is not permanently attached to their trailer. The Respondent also confirmed that he pays property taxes for the resort.

The Landlord referred to me the park website which details the park rules; these include restrictions on guest visiting hours and access to the resort, as detailed in part as follows:

> *"Day-visitors must leave the Resort by 9pm each evening."*
> *"The Resort has the right to remove any person at any time without notice/without refund."*
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> [Reproduced as written]

The Respondent's agent also pointed me to the caution text detailed on the receipt the Applicants were relying on to show there was a tenancy in place. This states the following:

> *"The undersigned owner of the said camping equipment agrees to abide by all the rules and guidelines of the Campground at all times and agrees that the management of the Campground can terminate this agreement at any time for reasons that it may deem as objectionable. Anyone using these facilities must do so with the understanding that the campground is provided as a recreational facility only, and it may not be used a primary residence. If you are asked to leave for any reason by the management of the campground, you must do so immediately or you accept that you will be treated as a trespasser by the appropriate local authorities. No subletting of any kind is permitted. You agree to pay all assessed utility bills and pay any late or collection costs as determined by the Campground whether suit be brought or not. The owners and managers of this facility provide it for your use as outdoor recreation and you agree to hold said owners and manager harmless for any liability derived from the use of the property."*
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> [Reproduced as written]

The female Applicant cross examined the Respondent's agent and asked him why they had been given an option in an email to rent the site in July 2015 for a yearlong

tenancy. The Respondent's agent replied stating that in the short time after he had taken ownership he had offered longer stays to other residents which incorporated the off peak seasons and these were taken up by for customers who were snow birds; however, the Applicants were denied this option because the management of the property did not feel it good practice to have a previous owner who had foreclosed on the property staying at the location on such a long term basis.

The female Applicant asked the Respondent's agent why the receipt they had provided into evidence had a start and end date of one year. The Respondent's agent pointed to the fact that the document had been generated on April 22, 2015 when the Applicants were still owners of the park and that the dates are placed onto invoices for the purposes of the computer system to keep the accounts open as ongoing seasonal rentals.

The female Applicant asked the Respondent's agent why the rates had changed in July 2015. The Respondent's agent replied stating that when they took over ownership from the Applicants, the structure of the seasonal and monthly rental rates was a mess and that it took them some time to establish the proper amounts which were then imposed in July 2015.

The Applicant stated that there were no signs in the park that display the park rules and that they were not informed by the owners of the park that their tenancy could be ended at any time. The Applicants stated that there were no signs restricting visitor access. However, when the Applicants were asked whether such visitor restrictions were in place when they were the owners, they responded stating that they had inherited these rules from the owner they had purchased it from but had not implemented them.

The Respondent's agent also pointed me to two signed witness statements he had provided into evidence. The Respondent's agent explained that these statements were from the previous owner who was a joint owner with the Applicant, and the other one was from his son. He pointed out that they had verified that no tenancy agreement had been entered into with the Applicants and that the only agreement was that they could stay in their trailer in the resort on a short term basis on the understanding that the Applicants would pay seasonal rent of $500.00 which included GST. The Respondent's agent pointed out that GST is not charged on long term arrangements.

Analysis

Section 2 of the Act stipulates 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. In this case, the parties are in dispute about whether a tenancy agreement had been established after the ownership of the dispute property had changed on April 27, 2015. In order to make findings in this respect, I turn to Policy Guideline 9 to the Act. This guideline clarifies the factors that distinguish a tenancy agreement from a license to occupy. I have reproduced the guideline in part for the parties' convenience as follows:

> *"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.*
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> *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 the evidence provided by both parties during the two hour hearing in relation to the issue of jurisdiction and make my findings based on the balance of probabilities as follows.

As the Applicants bear the burden to prove that a tenancy agreement exists between the parties I find that the Applicants have failed to provide sufficient evidence in this respect. This is because there is no written tenancy agreement that was completed by the parties and the Applicants rely on one receipt as evidence that a tenancy had been established between the parties.

I find the Applicants failed to adequately explain the inconsistencies of the dates on the receipt they relied on. For example, the Applicants testified that rent in the amount of $500.00 was payable on the first day of each month under the established ‘tenancy’; however, the receipt shows that payments made by the Applicants was not on the first day of the month. Furthermore, the Applicants stated that the receipt was provided to them at the time they entered into the oral contract which was on April 27, 2015; however, the receipt is generated with a date of April 22, 2015. I find that this document is not sufficient or reliable evidence for me to determine that a tenancy had been established between the parties on this basis alone.

As I turn my mind to the factors outlined in Policy Guideline 9 to the Act, I find that on the balance of probabilities, occupancy was given to the Applicants out of generosity rather than a business contract in the form a tenancy. This is because the Applicants were the previous owners of the dispute property and I accept that an agreement was made between the parties that the Applicants would continue to reside in the property with the intention that they would assist the Respondent transition into the operation of the park.

Furthermore, I find that the receipt the Applicants rely on to suggest that a tenancy had been entered into, clearly shows at the bottom that the person receiving the receipt was put on notice that the: “*Campground can terminate this agreement at any time*”; that the “*Campground is provided as a recreational facility only*”; and that any person asked to leave will be treated as a trespasser. I find this evidence is sufficient to show that the owner retained access and control of the property provided to the Applicants.

The Applicants disputed that they had been informed of the park rules including restrictions on guest entry. However, I find that the website evidence for the dispute property clearly shows restrictions on visitors. I find that when the Applicants were questioned about this point, they were unable to answer whether this rule existed when they were owners. Instead they submitted that it was a rule imposed by the owner who they purchased it from. I find that on the balance of probabilities, this rule would still have been in existence at the time the Applicants were owners of the property.

The Tenants failed to provide sufficient evidence or supporting documents to show that the dispute property is a manufactured home park and that it is zoned for such use. I also find that if the Applicants were of the understanding they had entered into a tenancy with the Respondent, then they should not have paid the increased rent payments above the $500.00 which also included GST. The most appropriate course of action would have been to bring this matter before dispute resolution to have it addressed so that any losses claimed could have been mitigated at that time. Rather, I find that the continued payments made by the Applicants supports the Respondent's evidence that the site was provided to the Applicants in exchange for monthly seasonal rates which included GST. Therefore, I find that this is evidence that the Applicants were not paying a fixed amount of rent and that the Act does not apply.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim must fail. In this case, I find that the Applicants evidence is no more compelling than the Respondent's evidence. As a result, I find that the Applicants have failed to demonstrate that jurisdiction applies in this case. Therefore, 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: October 21, 2015

Residential Tenancy Branch