Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Chemainus Gardens RV Resort Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI

Introduction

This hearing dealt with an application by the tenants disputing a rent increase. Both parties were represented at the conference call hearing.

Issues to be Decided

Does this tenancy fall within the jurisdiction of the *Manufactured Home Park Tenancy Act* (the "Act")?

If so, is the notice of rent increase in compliance with the requirements of the Act?

Background and Evidence

The facts are not in dispute. The tenancy began in April 2012 and the tenants reside in a motor home. The site on which the motor home sits is part of an RV resort and is commercially zoned as a campground. The tenants pay rent on a monthly basis which is expressed as $404.76 in rent and $20.24 in GST totaling $425.00. The tenants pay their own hydro costs while the landlord pays for water. On or about July 1, 2015, the landlords gave the tenants a notice on their letterhead which purported to raise the rent to a total of $472.50 per month.

The landlord took the position that the tenancy relationship does not fall within the jurisdiction of the Act. She cited the following reasons:

- The tenancy is a monthly agreement and there is no obligation on the tenants to stay long term;
- The home is not in any way affixed to the land and the tenants do not pay property tax; and
- The zoning of the land shows that it is not intended to be used for long term accommodation.

Analysis

While one would not normally expect that the Act would apply to accommodation in a campground or RV park, this is primarily because these accommodations are not intended to be long term or primary living arrangements and the legislature did not intend that vacationing parties enjoy all the rights of tenants in a permanent living situation. In *Steeves v. Oak Bay Marina Ltd.*, 2008 BCSC 1371, Mr. Justice Bracken stated that "By use of the phrase "living accommodation" in the definition of manufactured home, the MHPTA contemplates something that is used as a permanent primary residence." In this case, although the tenants reside in a motor home rather than in a manufactured home which is typically set up with semi-permanence on a lot, they have used the home as their primary residence for 3 years and also pay their own hydro costs, which is not typical of vacation accommodation. It may be that at the beginning of their residency they could have been considered to have been short-term occupants, but the facts before me are that they use the motor home as their primary living accommodation and therefore, at some point, I find they acquired rights under the Act. Although the land may be zoned as a campground, it is not used as a campground by these tenants and I find no requirement under the Act that homes under its jurisdiction be attached to the land in some way. For these reasons, I find that this tenancy falls under the jurisdiction of the Act.

The Act requires landlords who wish to increase rent to use the form approved by the Director of the Residential Tenancy Branch and to not increase rent beyond a prescribed amount, which for 2015 was 2.5%. I find that the landlord did not use the approved form and purported to increase the rent beyond the prescribed amount and therefore I find that the notice of rent increase is invalid. I find that the tenants' rent has not been legally increased and they may therefore continue to pay the amount of rent they are currently paying until it is increased in accordance with the provision of the Act.

Conclusion

The rent increase is invalid and therefore unenforceable.

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: December 07, 2015

Residential Tenancy Branch