



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

The Application for Dispute Resolution filed by the Applicant seeks the following:

- a. An order to set aside the Moorage Agreement Cancellation letter dated December 17, 2015
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Preliminary Matter:

The Application for Dispute Resolution identifies MO, the Managing Director as the respondent. The parties agreed that the proper respondent should be LRP Ltd and both parties agreed that I should amend the Application for Dispute Resolution to delete MO as the respondent and add LRP Ltd. as the respondent. As a result I amended the Application for Dispute Resolution to change the name of the Respondent.

A number of parties identified themselves as observers. Neither party objected to their presence. I ordered that they be permitted to stay. The President of the Floating Home Association stated she was an observer but she would be available to answers questions at the end. I determined that if she was going to give evidence it was not appropriate that she remain on the telephone while the hearing proceeded and that she could be called by one of the parties if they chose to do so. After consulting with the solicitor for the Applicants she stated she would not be giving evidence. .

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the Residential Tenancy Branch has jurisdiction to be determined by whether the relationship between the Applicant and Respondent is a tenancy governed by the Manufactured Home Park Tenancy Act?
- b. Whether the Applicants are entitled to an order cancelling the Moorage Agreement Cancellation letter dated December 17, 2015?
- c. Whether the Applicants are entitled to recover the cost of the filing fee?

The Applicants are the owners of a floating home. The Respondent is the operator of a Marina. In 2004 the parties entered into a Floathome Moorage Agreement for the moorage of the Applicant's floating home. In a letter dated December 17, 2015 the Respondent gave the Applicants 30 days notice cancelling the Moorage Agreement effective February 1, 2016.

The parties agree that if Manufactured Home Park Tenancy Act covers this relationship, the letter cancelling the agreement is of no force and effect because the Respondent failed to use the forms required under the Act. As a result, by agreement between the parties I did not hear evidence as to whether there are grounds to terminate the Moorage Agreement on the merits. .

Background and Evidence

In late October 2004 the parties entered into a FLOATHOME MOORAGE AGREEMENT dated October 28, 2004. The agreement provides for the mooring of a floating home at the premises of the Marina and includes the following:

- The floating home is identified as a vessel.
- It is to be moored at berth 5 "but may be moved to another berth in accordance with paragraph 4 of the Terms and Conditions which are attached..."
- Paragraph 4 of the Terms and Conditions provides "In the event of an emergency, the Marina may without notice to the Owner and at the sole risk of the Owner move the vessel to the nearest place of safety, however provided that the Marina shall give advance notice of such move when reasonably possible.
- It further provides "In the event that the Marina acting reasonably, considers a change of moorage to be necessary, the Marina may on SEVEN (7) days written notice delivered to the Owner in accordance with this Agreement, require the Owner to move the Vessel to some other berth. Failure by the Owner to move the Vessel within SEVEN (7) days shall constitute due fault under this agreement.
- The owners were required to pay \$12,500 prepaid moorage deposit to secure the right to enter into a new long term moorage agreement.
- This Agreement is on a month-to-month basis only.
- The Agreement provides that either party may terminate the Agreement by giving the other party THIRTY (30) days notice in writing.

- The Agreement is for moorage of the Vessel only and is not intended to and will not create any form of tenancy agreement with any owners, occupants, or users of the Vessel.
- The Agreement incorporates a Schedule of Terms and Conditions, a Schedule that provides for the payment of \$500 monthly moorage fess and \$210 proportionate share of the estimated annual operating expenses and a Schedule setting our Moorage Rules and Regulations.

The Applicants' float home was towed to its present location shortly after this Moorage Agreement was entered into. The float home has two stories, two bedrooms, two bathrooms and is about 1300 square feet. The Applicants have lived in the float home since 2004.

On December 17, 2015 the Respondent served a letter cancelling the Moorage Agreement effective February 1, 2016.

Applicants' Submission::

The Applicants submit the Manufactured Home Park Tenancy Act applies to the relationship between the parties and the Residential Tenancy Branch has jurisdiction based on the following:

- The definitions and provisions of the Manufactured Home Park Tenancy Act.
- The broader purposes of the Act as set out in the cases decided by the Supreme Court of British Columbia
- Floating homes have been considered as manufactured homes under other statutes (including a homeowner's grant).

The Applicants refer to the following provisions of the Manufactured Home Park Tenancy Act.

What this Act applies to

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.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

The Manufactured Home Park Tenancy Act has the following relevant definitions.

"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;

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities;

The Applicants submit that their floating home is a manufactured home as defined by the Act. It was designed to be moved from one place to another. It was towed to its present location. The respondent is operating a manufactured home park as defined by the Act. They are renting out sites for the purpose of being occupied by a manufactured home. The written argument presented by the applicant emphasizes 'THERE IS NO MENTION IN THE ACT THAT HOME MUST BE ON LAND TO BE CONSIDERED A MANUFACTURED HOME NOR DOES THE SITE HAVE TO BE ON LAND TO BE CONSIDERED A MANUFACTURED HOME PARK.

The Applicants' written submission also emphasizes:

- The definition of "tenancy agreement" does not require exclusive possession for a prerequisite of jurisdiction.
- The definition of "tenancy agreement" includes an implied agreement.
- WHILE AN OLD AGREEMENT IN THIS CASE WAS SIGNED 12 YEARS AGO, THE CURRENT CONDITIONS NOW OPERATED AT THE MARINA WITH RESPECT TO ITS FLOATING HOME TENANTS AND THE ENVIRONMENT UNDER WHICH FLOATHOMES ARE NOW GOVERNED, TAXED, BUILT, INSURED AND FINANCED HAS EVOLVED TO SUCH AN EXTENT THAT A TENANCY IS ABSOLUTELY IMPLIED.
- The Provincial Government refers to float homes as Manufactured Homes in its Assessment fact sheet for taxation.

The Applicants refers to Policy Guideline #9 and submit that after weighing all of the factors as to whether the relationship should be characterized as a tenancy and not a licensed to occupy based on the following:

- The Applicants were assigned a fixed berth (berth #5)
- At all times this was intended to be used for residential purposes.
- The floating home has been used for Residential purposes.
- The berth has a fixed mailing address associated with it.
- If there is a change in berth, there will be a change in the mailing address to accompany it.

- The Applicants provided 12 post dated cheques per year
- The rent can only be change once every year.
- The Applicants pay property taxes and utilities themselves
- The property taxes are assessed on an individual bases. This is opposite for a license to occupy.
- The Applicants do not pay GST.
- The Applicants provided a deposit at the start of the tenancy.
- The Respondent does not have any right to enter except with notice.
- The Respondent can only move the floating home in the case of an emergency with advance notice.
- If the Marina is intending to move the floating home they must act reasonably.
- Each side must give 30 days notice to terminate.
- There are no imposed visitor's hours.
- The floating home is not registered as a boat or vessel.
- The Respondent has referred to float home owners as tenants. They have recently changed this label to vessel owners.

Applicant's Submission on broader policy concerns:

The Applicants submit that while the Manufactured Home Park Tenancy Act seeks to balance the rights between landlords and tenants it provides benefits to the tenants that would not otherwise exist and any ambiguity should be resolved in favour of the applicant. The Applicants rely on paragraph 20 **Lang v. British Columbia (Residential Tenancy Arbitrator)**, 2008 BCSC 1707

[20] I am satisfied that the decision to decline jurisdiction is neither reasonable nor correct, having regard to the purposes of the Act, the decided authorities, and the facts. Clearly, the recreational vehicle or manufactured home of the petitioner is a manufactured home within the meaning of the definition in the **Manufactured Home Park Tenancy Act**. Equally clearly, the RV park is a manufactured home park within the meaning of the definition in the **Manufactured Home Park Tenancy Act**. Section 2 says that the **Manufactured Home Park Tenancy Act** applies to tenancy agreements, manufactured home sites and manufactured home parks, and jurisdiction is not excluded by s. 4. I note as well that the DRO's finding that the petitioner has a licence to occupy was made under the **Residential Tenancy Act**, where the definition of tenancy agreement includes a licence to occupy. No such provision is to be found in the definition of tenancy agreement in the **Manufactured Home Park Tenancy Act** or elsewhere in that statute.

The Applicants also refer to **Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)**, 2007 BCSC 257 which include the following statement:

[11] I start from the accepted rules of statutory interpretation. I conclude that the **Act** is a statute which seeks to confer a benefit or protection upon tenants. Were it not for the **Act**, tenants would have only the benefit of notice of termination provided by the common law. In other words, while the **Act** seeks to balance the rights of landlords and tenants, it provides a benefit to tenants which would not otherwise exist. In these circumstances, ambiguity in language should be resolved in favour of the persons in that benefited group: See **(Canada Attorney General) v. Abrahams**, [1983] 1 S.C.R. 2: **Henricks v. Hebert**, [1998] B.C.J. No. 2745 (QL)(SC) at para. 55:

I think it is accepted that one of the overriding purposes of prescribing statutory terms of tenancy, over and above specifically empowering residential tenants against the perceived superior strength of landlords, was to introduce order and consistency to an area where agreements were often vague, uncertain or non-existent on important matters, and remedies were relatively difficult to obtain.

The Applicants rely on section 5 and 6 of the Manufactured Home Park Tenancy Act which provide as follows:

This Act cannot be avoided

- 5** (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Enforcing rights and obligations of landlords and tenants

- 6** (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.
(2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 51 (1) *[determining disputes]*.
(3) A term of a tenancy agreement is not enforceable if
(a) the term is inconsistent with this Act or the regulations,
(b) the term is unconscionable, or
(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

The Respondent made the following submissions

1. A tenancy does not exist between the Applicants and the Respondent.
2. The Moorage Agreement provides for the rental of a berth for the moorage of a vessel. However, the applicants may be required to move the floating home to another berth in accordance with the provisions of the agreement and schedule.

3. Paragraph 3 of the Moorage Agreement provides that “The Agreement is for moorage of the Vessel only and is not intended to and will not create any form of tenancy agreement with any owners, occupants, or users of the Vessel.
4. The Moorage Agreement provides that either party may terminate the Agreement by giving 30 days Notice.
5. The Applicants have not been given exclusive possession of the Berth. The respondent’s employees regularly go and remove deadheads and other debris that may affect the safety.
6. As of 2010 the Marina has provided moorage at a berth on any one of (now) 14 finger floats and the Marina has the right to change temporarily or permanently the moorage berth assigned to the Vessel
7. The Respondent relies on 2010 decision of an arbitrator which determined that floating homes were not covered by the Manufactured Home Park Tenancy Act.
8. The Respondent also relies on a 2015 decision where the arbitrator in that case determined the Manufactured Home Park Tenancy Act did not apply because the owners did not have exclusive possession.
9. The Manufactured Home Regulations exempts a floating home from the operation of the Manufactured Home Act (note: this is not the Manufactured Home Tenancy Act).

Analysis:

The submissions of both parties focused on whether the relationship was a tenancy or a license to occupy. Implied with their submissions was that if I find a tenancy exists, the Manufactured Home Park Tenancy Act applies. I disagree. Tenancies may exist which are not covered by the provisions of the Manufactured Home Park Tenancy Act. The issue is not whether this is a license to occupy or a tenancy. Rather it is whether the relationship between the parties is governed by the provisions of the Manufactured Home Park Tenancy Act. A number of principles flow from this reframing of analysis:

- In order for the Manufactured Home Park Tenancy Act to apply it must involve tenancy agreements, manufactured home sites and manufactured home parks.
- Thus, if the relationship is characterized as a license to occupy the Manufactured Home Park Tenancy Act does not apply as it does not involve a tenancy.
- However, there may be tenancies which do not meet the definitions set out in the Manufactured Home Park Tenancy Act and as a result the Manufactured Home Park Act does not apply. For example section 4 of the Manufactured Home Park Tenancy Act provides that it does not apply if the manufactured home site and a manufactured home

are both rented to the same tenant. If such was the case the Residential Tenancy Act would apply and there are around 20 different types of tenancy agreements involving accommodation to which that Act does not apply.

Both sides presented other statutes have included or exempted a floating home from the provisions of their Act. I do not find these Acts to be of assistance. The question is whether floating homes are covered by the definitions and provisions of the Manufactured Homes Park Tenancy Act.

The Manufactured Home Park Tenancy Act applies to tenancy agreements, manufactured home sites and manufactured home parks. I accept that a floating home fits the definition of a manufactured home as set out in the Act. It is used or intended to be used as living accommodation. It was designed to be moved from one place to another by being towed or carried. While the drafters of the legislation may have contemplated towing being land based and may not have considered the towing of a floating home, the ordinary interpretation of towed extends to towing in the water.

However, I do not accept the submission of the Applicants that the relationship between the parties involves a manufactured home park or is a manufactured home site. Those terms are defined in the Act as follows:

"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;

Black's Law Dictionary 4th edition defines parcel and parcels as follows:

Parcel. a part or portion of land. As used of chattels, it signifies a small package or bundle. See *State v. Jordan*, 36 Fla. 1, 17 South. 742; *Miller v. Burke*, 6 Daly (N. T.) 174; *Johnson v. Sirret*, 153 N. Y. 51, 46 N. E. 1035.

Parcels. A description of property, formally set forth in a conveyance, together with the boundaries thereof, in order for easy identification

Black's Law Dictionary 4th edition defines "site" as

Site. A plot of ground suitable or set apart for some specific use.

In my view the ordinary interpretation of these words requires the rental of a piece of land before the provisions of the Manufactured Home Park Tenancy Act are invoked and the language cannot be reasonably extended to cover rental of a berth in which a floating home can be moored.

I find support in this determination from section 12 of Section 12 of the Manufactured Home Park Tenancy Act Regulations which provides as follows:

Terms that must be included in a tenancy agreement

12 (1) A landlord must ensure that a tenancy agreement contains

- (a) the standard terms, and
- (b) the boundaries of the manufactured home site measured from a fixed point of reference.

A landlord who rents a manufactured home park site must ensure that the tenancy agreement includes boundaries of the manufactured home site measured from a fixed point of reference. The Moorage Agreement is significantly different in that it does not involve the rental of land and it does not have boundaries. Rather, it gives on an owner of the float home the right to moor their float home at a certain location but not the right to a site that has boundaries to it.

Tenancy is defined in the Manufactured Home Park Tenancy Act as

"tenancy" means a tenant's right to possession of a manufactured home site under a tenancy agreement;

The decision of previous arbitrators is not binding on an arbitrator. However, I find the decision of the arbitrators in the two previous decisions to be persuasive. In both cases the arbitrators determined the floating home was not covered under the Manufactured Home Park Tenancy Act. The arbitrators in the previous two cases found, the right to possession is a critical aspect of a tenancy and a tenancy agreement. The applicant submits there is no requirement in the definition of "tenancy agreement" that the tenant be given exclusive possession. However, section 22 of the Act provides the right to "exclusive possession." It gives the Applicants the right to moor their floating home at a berth. As the previous arbitrator has state The New Penguin English Dictionary defines "moor" as "to fasten (a vessel or buoy) with cables, lines, etc. or "to secure a vessel, etc., by mooring it." Moorage is defined as a "place to moor" or "a charge made for mooring." The agreement and relationship between the parties do not set out a defined area, under water or otherwise, over which the tenant has exclusive possession.

I do not accept the submission of Counsel for the Applicants these cases are distinguishable. While the Applicants in this case were assigned a specific berth, I determined the Respondents retained sufficient powers under the Moorage Agreement to re-assign them and as such the Applicants did not have possession as contemplated in the Manufactured Home Park Tenancy Act.

In short I determined that the relationship is not governed by the Manufactured Home Park Tenancy Act because it does not involve a type of tenancy that is covered by the Act. On that basis alone I decline to hearing the matter for lack of jurisdiction.

In addition, I determined the relationship is a license to occupy and not a tenancy. The Applicant submits that a proper consider Policy Guideline #9 Tenancy Agreements and License to Occupy would show the relationship between the parties is more characteristic of a tenancy rather than a license to occupy. This Guideline provides

“This Guideline clarifies the factors that distinguish a tenancy agreement from a license to occupy. The definition of “tenancy agreement” in the Residential Tenancy Act includes a license to occupy. However, the Manufactured Home Park Tenancy Act does not contain a similar provision and does not apply to an occupation of land that under the common law would be considered a license to occupy.

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 Act¹. 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. “

The Manufactured Home Park Act does not require the provision of a security deposit. The existence or lack of existence of a security deposit is of little help as a security deposit is not required under the Manufactured Home Park Tenancy Act. The factor of whether the Respondent retains access to or control of portions of the site is of little help in my analysis as I determined the Applicant failed to establish the presence of a site. Even if one stretched the definition of “berth” to be the equivalent of site, the Respondent retained sufficient access and control over portion of the berth under the Moorage Agreement. Thus it cannot be said that the Applicants have possession of the berth as required by a tenancy. The Applicants pays property taxes on their floating home and this is a factor weighing in favour of finding of a tenancy. The factor relating to family or personal relationship is not relevant. The Moorage Agreement provides that the agreement may be cancelled and the occupier evicted without reason although 30 days notice must be given. The Moorage agreement provides this is a license and that there is no intention to make a tenancy.

I do not find the factors in the Policy Guidelines distinguishing between a tenancy and a license to occupy when dealing with a recreational vehicle is helpful in this case and I have not considered them.

After weighing all of the factors I determined the relationship of the parties is more consistent with a license to occupy rather than a tenancy primarily based on the provisions in the Moorage Agreement and the fact that the Applicants do not have exclusive possession. Counsel for the Applicants submits that on policy reasons I should find that the provisions of the Manufactured Home Park Tenancy Act should be interpreted broadly as it was enacted to provide tenants with protections they would not otherwise have. Further, he submits these cases must be considered on a case to case basis and if there is any ambiguity it should be interpreted in favour of the Tenant. While I accept the broad principles set out the two Supreme Court cases I find that they do not apply for the following reasons:

- I determined there was no ambiguity that should be found in favour of the Applicants. I am satisfied based on a reading of the definitions and provisions of Manufactured Home Park Tenancy Act that it does not apply to floating homes.

- One of the written submissions of the Applicants states that the Old agreement was signed 12 years ago, the current conditions now operated at the Marina with respect to its floating home tenants and the environment under which float homes are now governed, taxed, build, insured and finances has evolved to such an extent that a tenancy is absolutely implied. It is unclear exactly what is meant by this submission. However, I do not accept the submission if the Applicants are proposing that a license to occupy can evolve into a tenancy without an agreement between the parties.
- It may be that there are strong policy reasons for drafting Act for floating homes that would include similar the provisions to the Manufactured Home Park Tenancy Act protecting Tenants from unilateral actions to end the tenancy. That is a decision for the legislature. However, I do not accept the submissions that the definitions and provisions in the Manufactured Home Park Tenancy Act as they are presently worded cover floating homes.
- I do not accept the submissions of the Applicants that the parties have attempted to avoid or contract out of the provisions of the Act. At the time the parties entered into the Moorage Agreement neither party thought that the Act applied. Further, I do not accept the submissions that the provisions of the Moorage Agreement are unconscionable.
- Neither party provided me with an arbitration or a Supreme Court of British Columbia decision in which an arbitrator or justice determined that the Manufactured Home Park Tenancy Act covers floating homes.

Policy Guideline #27 dealing with jurisdiction includes the following:

“c. Travel Trailers and Recreational Vehicles

If the residential premises consist of a travel trailer or a recreational vehicle in a recreational vehicle park, the agreement between the parties may well be included in the *Residential Tenancy Act* if they meet the requirements of section 2. Each case will turn on its particular circumstances and it is possible that the relationship is not a tenancy and not included in the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act* (see Guideline 9).

A similar question arises where the dispute is between the owner of a floating home and a person who has rented the floating home from the owner. The issue will be whether the parties have entered into a tenancy agreement included in section 2 of the *Residential Tenancy Act*. Such rental agreements are a license to occupy. While a license to occupy is included in the *Residential Tenancy Act*, a floating home does not meet the definition of a “rental unit” in section 1 of that Act. Since the rental of a floating home is a license to occupy, the *Manufactured Home Park Tenancy Act* would not apply.”

Policy Guideline #27 accepts the proposition that the rental of a floating home is a license to occupy and that the Manufactured Home Park Tenancy Act would not apply.

Determination and Orders:

Based on the reasoning set out above I find that the Manufactured Home Park Tenancy Act does not apply and I decline jurisdiction to resolve this dispute .

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 21, 2016

Residential Tenancy Branch