Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRANDETTE WELL SERVICING LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNLC, FF

Introduction

This hearing was convened by way of conference call in response to applications from tenants living in nine different mobile home sites. The tenants seek an Order to cancel a Notice to End Tenancy (landlords conversion of the Manufactured Home Park to another use), and to recover the filing fee from the landlord for the cost of these applications.

Most of the tenants appeared and were represented by their Legal Counsel (Counsel). The landlord also appeared and was represented by his Legal Counsel (Counsel). The hearing was adjourned on the matter of jurisdiction and to provide opportunity for the Arbitrator to consider the landlord's evidence and the submission made by both parties. The hearing was reconvened on today's date. The parties were given the opportunity to be heard, to present evidence and to make submissions. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of the tenants' evidence and submission in rebuttal of the landlord's late evidence. Counsel for the landlord agreed that they submitted documentary evidence to the tenants seven days before the hearing; however, this same evidence was not submitted to the Residential Tenancy Branch until three days before the hearing and due to the lateness of this documentary evidence it was not before me at the time of the hearing.

Procedural Matter - At the outset of the hearing, the matter of each party's evidence was discussed. The landlord's evidence was submitted to this office only three days prior to the hearing.

In considering Rule 3.14, the landlord as the respondent, must submit their evidence so that it is received by the Residential Tenancy Branch ("RTB") and the other party not less than seven days prior to the hearing, and in this case, the landlord did not. Consequently, Rule 3.17 has been applied in considering whether to accept the landlord's evidence, I find the tenants did receive the landlord's evidence within the time frame but the Arbitrator did not. I heard both parties on the question of accepting this late evidence. Counsel for the tenants agreed to allow the landlord's late evidence to be considered and did not feel that in allowing this it would unreasonably prejudice the tenants or breach the principals of natural justice. I have therefore allowed the landlord's late evidence to be considered. Further to this, I have allowed the tenant's late evidence to be submitted in rebuttal of the landlord's evidence. The hearing was adjourned in accordance with Rule 7.8 and 7.9 to provide a fair opportunity for the parties to be heard.

At the reconvened hearing Counsel for the landlord required me to base my decision on the written submissions of the landlord. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Does the *Manufactured Home Park Tenancy Act* (the *Act*) apply to these tenancies?
- If so are the tenants entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

Counsel for the tenants gave representation on behalf of the tenants and stated: The tenants all rent sites in this Mobile Home Park. The north side of the park consists of a community of mobile homes both seasonal and permanent with each of the tenants owning their own home and renting the pad from the landlord. Each of the mobile homes is registered with the Manufactured Home Registry. The homes are all located on permanent sites and although the tenants do not occupy their homes all year round they pay rent for the year and their homes are not travel trailers or recreational vehicles and they would require significant effort to remove from the park.

In 2006 this landlord purchased the park and in September, 2006 the tenants in residence at that time received correspondence from Counsel for the landlord stating the following:
“I am further advised that there are no written tenancy agreements in existence. As a result, the legal relationship between you as the tenant and Brandette as the landlord is governed exclusively by the Manufactured Home Park Tenancy Act.”

On or about June 01, 2016 the landlord sent the tenants a “Notice to vacate” stating, in part, that:
“Previously, Brandette Well Serving Ltd granted you a temporary license to locate your mobile home or trailer and other possessions on the property identified as Pad__. This temporary license included use of the property and payment of a monthly fee during various time periods of the year.

You are hereby notified that Brandette is closing the property as a temporary use for mobile homes and trailers as of September 30, 2016 and will not be renewing the temporary license for the use and occupancy of the property to all temporary licensees of the property and is hereby terminating any right that you may have to use the property as of September 30, 2016.”

The tenants' position is that this notice suggests that the tenants only have a license to occupy rather than a tenancy under the *Manufactured Home Park Tenancy Act* (The *Act*) and their position is that in fact tenancies do exist and therefore the *Act* applies to the relationship between the tenants and the landlord and the landlord must follow the *Act* if he wants to end their tenancy in accordance to the *Act*.

The tenants submit that the Notices provided by the landlord are not a legal notice in accordance to the *Act*, they are not on an approved form and they do not provide the required 12 months' notice to end their tenancies.

Counsel for the tenants submits that the Residential Tenancy Policy Guidelines #19 clarifies the factors that distinguish a tenancy from a license to occupy, this states:

"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."

Counsel for the tenants submits that 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.

There are other factors included in the guideline which weigh against the finding of a tenancy when dealing with travel trailers or recreational vehicles which although these tenants' mobile homes do not fall under either of these categories it is useful in identifying the relationship the parties intended to create. These factors are as follows:

- 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
- Visiting hours are imposed.

Counsel for the tenants submits that there is clear evidence of the intention between the parties to form a tenancy relationship and again referred to the letter dated September 13, 2006 from the landlord's previous Counsel outlining that the legal position between the parties is that of landlord and tenant and that their relationship will be governed by the *Act* and sets out that each of the tenants would be entitled to 12 months' notice to end the tenancy when the landlord redeveloped the park and that the landlord would pay to the tenants an amount equal to 12 months' rent on or before the effective date of the notice. The tenants were also advised in this letter that the landlord fully intends to respect all of its legal obligations in this matter.

The letter also outlines that if the tenants wished to sell their mobile homes and assign their tenancy to the new owner the selling tenant needed to obtain the permission of the landlord to assign the tenancy. The tenants have provided evidence that when they purchased their mobile homes; they did obtain permission from the landlord.

In 2010 the landlord increased the rent for the mobile home sites and followed the process to do so that as outlined under the *Act.* This again confirmed to the tenants that their tenancies were governed by the provisions of the *Act*.

When correspondence was sent to the tenants prior to the issuance of the Notices the landlord clearly interacted with the tenants in a manner consistent with the *Act*. Therefore, even without a written tenancy agreement the tenants believe there is a presumption that a tenancy exists under the *Act*. Each of the tenants has exclusive occupancy and control over their mobile home and site and the tenants have paid rent to the landlord in exchange for the exclusive occupancy of their sites in the park. Rent is payable all year round whether or not the tenants access their mobile homes and the rent does not fluctuate with the seasons.

In addition to paying rent the tenants are also responsible for their own BC Hydro, cablevision, property taxes and insurance. The tenants are also responsible for their own septic systems with each site having its own system. The landlord provides water from a well system and each tenant is responsible to turn their water access on or off. The tenants have exclusive possession of their own homes; the landlord does not have keys and must gain the tenant's permission to access their homes. The tenants are free to allow others to use their mobile homes and do not need to seek the landlord's permission. Furthermore, there is no visitor hours imposed on the tenants.

The tenants have exclusive occupation of their sites and have been given liberty to build additions onto their mobile homes within their sites. The tenants also maintain their own sites. Many of the mobile homes have semi-permanent structures built on including sheds, porches, gardens and decks. This supports the tenants' position that they have exclusive control over their sites. The mobile homes are intended for residential use and are equipped with all the amenities of a typical home including fridges, stoves, dishwashers and laundry facilities.

Counsel for the landlord provided written submissions on behalf of the landlord concerning the relationship between the applicants and the respondent. Counsel for the landlord referred to these written submissions that state the following:
The *Act* does not apply to the rental arrangement between the owner and the self-described tenants of the Mobile Home Park since the applicants do not reside on the owner's lands as a permanent primary residence.

The owner submits that the Residential Tenancy Branch does not have jurisdiction to hear the applicants' applications to set aside the Notices to vacate issued on June 01, 2016 because the applicants reside on the owner's Lands for only seasonal, short term vacation and recreational uses.

The owner is the registered owner of the landlords.[information contained here about the landlord]. The owner acquired the Lands on or about May 12, 2006 [owners legal name provided here]

The Lands consist of approximately 16 sites on which mobile homes are located, two cabins and a Quonset building. There are no written tenancy agreements between the owner and the applicants. None of the mobile homes are occupied as the permanent primary residence of the mobile home owners, including the applicants.

The applicants' mobile homes are very old and have been located on the Lands for many years [details of years the mobile homes were first located on individual sites]. The owner believes the mobile homes were placed on the Lands when they were new or almost new. The mobile homes had been used as permanent residences years ago but by the time the owner acquired the Lands they were used for seasonal vacation use only and not as primary residences.

The mobile homes are not suitable for year round occupation due to their age and condition. The mobile homes no longer may be reasonably used for residential occupation under winter conditions. The mobile homes are only suitable for use during

non- winter times of the year and are in fact only used by the applicants during the non-winter months. Even if the mobile homes are capable of being used as longer term housing that that does not change the character of their actual use as seasonal, short-term vacation and recreational homes.

The owner provided information regarding the dates each applicant acquired their mobile homes on the Lands. The applicants have submitted information that confirms that their permanent residences are located at locations other than the Lands.

The current zoning does not permit mobile homes. The previous zoning only permitted one dwelling or one mobile home. Neither the current nor the previous zoning permitted a “Manufactured Home Park”

The owner submits that the provisions of the *Act* do not apply to the applicants’ occupation of their sites on the Lands because there is no “Manufactured Home Park” within the meaning of the *Act*. The owner referred to a previous decision of Steeves v. Oak Bay Marina Ltd [2008] B.C.J. No. 1941. And cited paragraphs from that decision regarding that the definition of the *Act* requires a manufactured home to be used as living accommodation and that the *Act* contemplates something that is used as a permanent primary residence…… The *Act* deals with permanent and semi-permanent accommodation and that the *Act* is intended to provide regulation to tenants who occupy the park with the intention of using the site as a place for a primary residence and not for short term vacation or recreational use where the stay is transitory and has no features of permanence.

The owner argues that the Steeves decision requires that for the *Act* to apply the accommodation structure must be both permanent and used as the primary residence of the occupant and effectively established as exclusion from the application of the *Act* of accommodation used for short term vacation or recreational use comparable to the exclusion in the *Residential Tenancy Act* s. 4(e) which states:

(e)The Act does not apply to living accommodation occupied as vacation or travel accommodation.

The applicants' mobile homes have features of permanence exceeding that of wheeled RV's; however, the *Act* does not apply since they are used for short term vacation, seasonal, or recreational use only, not the primary residence of the applicants.

The past use of the Lands by occupants may at some point years past brought it within the definition of a "Manufactured Home Park" and the application of the *Act*; but it is the current use which determines whether it can now be considered a "Manufactured Home Park" to which the *Act* applies. The emails relied on by the applicants are outdated and irrelevant to the current use of the Lands.

The applicants rely on a letter dated September 13, 2006 from the owner's lawyer as evidence that the *Act* applies,; however, the applicants cannot rely on this letter because:

The applicants of pads 1, 2, 5, 9 and 16 did not own a mobile home on the Lands when this letter was sent;

Only the applicants who own pads 5 and 10 have submitted this letter as evidence so it cannot be relied on by all of them;

The owner of pad 5 did not own the mobile home at the time the letter was sent and in the case of pad 10 it was the deceased father of the applicants who owned the property at the time the letter was sent, not the applicant;

The Steeves decision subsequently only applied to permanent primary residences;

The parties cannot bring themselves within the application of the *Act* by private agreement;

The application of the *Act* and the jurisdiction of the Residential Tenancy Branch is a matter of law.

The Residential Tenancy Branch cannot claim jurisdiction unless the *Act* applies in accordance to its terms and court decisions.

The letter is no more than the owner's intention to satisfy his legal obligations. If the *Act* does not apply then the Owner has no legal obligation to give the applicants the benefit of the *Act*, and
The letter was written in 2006 and does not take into account the current use of the Lands or the current law.

The owner submits that the Residential Tenancy Branch does not have jurisdiction in this matter.

The owner testified that at the time he bought the Manufactured Home Park some tenants did live there year round. A year after that there was some expected development to the land and some owners sold up and the purchasers of those homes knew there would be re-zoning of the site. The landlord testified that he was going to build a home on the property but the city would not allow sub-divisions. The owner then sold the land to a developer subject to him getting a development permit. The developer was not able to obtain permits so the sale did not complete.

The owner testified that another developer has approached him to buy two other pieces of the landlord's property. There is verbal approval for re-zoning for a resort and commercial use but no development permit. A hotel is going to go up on one of the pieces of land subject to an intersection being allowed to go in once the site for that has been approved. The property will be divided into three lots. This is approved but the landlord has not yet done this division.

Analysis

First I will make note here that the parties rely on previous decisions from Supreme Court. While I have considered these decisions it is important to note that under s. 57(2) of the *Act* I am not bound to consider other decisions made and this decision is based on the merits of this case.

> *(2) The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.*

In dealing first with the matter of jurisdiction; I have considered the testimony and documentary evidence before me regarding this issue and I find as follows:

The landlord's submissions rely heavily on the fact that the tenants do not use these mobile homes as their permanent residences; however, the *Act* does not apply with respect to any of the following and does not mention primary or permanent residences:

> *(a) a tenancy agreement under which a manufactured home site and a manufactured home are both rented to the same tenant;*
> *(b) prescribed tenancy agreements, manufactured home sites or manufactured home parks.*

From the evidence before me I find the tenants pay rent all year round for their sites; they manage their own water, shutting this off when they leave the site and turning it back on when they come back to the site; they pay other utilities year round for their homes as needed and have access to their homes all year round whether or not they choose to use them; furthermore, the park does not close down for the winter months. It is irrelevant therefore whether or not the tenants' permanent residence is elsewhere if they still rent these sites all year round then the landlord does not have the right to restrict their access and there is no written agreement to state this restriction will be applied.

The tenants' mobile homes are clearly not transitory homes but are permanent residences which the landlord has allowed the tenants to improve and add additions to over the years which have established a sense of permanence for these homes. Clearly these homes would be difficult to move after these improvements have been made.

The tenants submit that their manufactured homes are capable of being used year round and one of the tenants has evidence that she and her family occupies the manufactured home during the winter and the summer months. The landlord has insufficient evidence to support the reasoning that the homes cannot be used year round due to their age. I must therefore concur with the tenants' evidence that all the homes are capable of being used year round if the tenants choose to do so.

The landlord also relies on the fact that there are no written tenancy agreements in place; however, the definition of a tenancy agreement under the *Act* shows that a **"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.

It is the landlord's obligation to ensure a written tenancy agreement is in place and if one has not been put in place then it is the oral agreement that applies and by the acceptance of rent each month the landlord has established a tenancy with each of the tenants. If the landlord now refuses to accept the rent then as long as the tenants have offered it then the tenancy still exists and cannot be ended for nonpayment of rent.

Having reviewed the letter written by the landlord's lawyer when the landlord purchased the property; I find this letter clearly indicates that the landlord has established tenancies under the *Act* as his lawyer has agreed in the letter that because there are no written tenancy agreements in existence the legal relationship between the tenants and the landlord are governed exclusively by the *Manufactured Home Park Tenancy Act* (the *Act*).

This letter goes on to state that the landlord intends to develop the park and convert it to non- residential use or a residential use other than a Manufactured Home Park and requires the tenants to remove their manufactured homes and all other property from the park in due course. Pursuant to the *Act* the landlord will be able to give the tenants formal notice to end their tenancy agreements once its development permit application

has been approved by the District. The letter goes on to state that the *Act* requires that the tenants be given at least 12 months' notice of the end of their tenancy and to pay the tenants an amount equal to 12 months' rent on or before the effective date of the end of the tenancy. The letter ends with the wording "Please be advised that Brandette fully intends to respect all of its legal obligations in this matter.

It is clear from this letter that when the landlord purchased this park it was a Manufactured Home Park as defined under the *Act* and that the tenancies were governed by the *Act*. I find it is also clear that the landlord was aware of his obligations in ending the tenancies when he had all required approvals and permits in place. The landlord cannot change the use of the Manufactured Home Park without giving the tenants 12 months' notice on an approved form

The landlord argues that when this letter was written in 2006 the tenants were not at that time owners of their manufactured homes and that only two of the applicants provided the letter in evidence. I find it is not a matter of whether or not these tenants were owners of their homes at the time the letter was written it is whether or not the landlord's intention at that time and the previous owner's intention was for this park to be a Manufactured Home Park and governed under the *Act*. Clearly from the content of this letter this was the case and when the tenants all purchased their homes with the landlord's permission they did so under the understanding that this was a Manufactured Home Park and that the *Act* did apply. Furthermore, I am satisfied that the landlord exercised other provisions under the *Act* such as raising the rents in compliance with the *Act* in 2010 and collecting a monthly rent from the tenants. I am of the opinion therefore that the landlord is now attempting to avoid the *Act* by stating that the landlord is not governed by the *Act* as the tenants are not permanent occupants of their manufactured homes.

I am therefore satisfied from the evidence before me that the *Act* does apply to all tenancies and the landlord. The *Act* is not intended to regulate the use of the Manufactured Home Park to seasonal use when the tenants' manufactured homes have

more permanence and when they would require significant effort and cost to relocate. As the landlord has intended this park to operate as a Manufactured Home Park then all tenants with homes located on the park have the same protection under the *Act*. There is no provision under the *Act* as there is under s. 4(e) the *Residential Tenancy Act* that provides that the *Act* does not apply for living accommodation occupied as vacation or travel accommodation.

Consequently, I find the *Act* does apply and that the Residential Tenancy Branch does have jurisdiction in this matter.

Therefore, with regard to the tenants' applications to dispute the Notice to End Tenancy; I find the Notice is not a legal Notice as provided under s. 42 of the *Act* and therefore the Notice has no force or effect and is set aside.

I find the landlord's decision to serve the tenants with a Notice to require the tenants to vacate the park at the end of September, 2016 is motivated by his desire to sell the property for development. To this end the landlord is still entitled to do so, but must comply with s. 42 of the *Act* which states:

> ***42*** *(1) Subject to section 44* [tenant's compensation: section 42 notice]*, a landlord may end a tenancy agreement by giving notice to end the tenancy agreement if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert all or a significant part of the manufactured home park to a non-residential use or a residential use other than a manufactured home park.*
>
> *(2) A notice to end a tenancy under this section must end the tenancy effective on a date that*
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> *(a) is not earlier than 12 months after the date the notice is received and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and*

(b) if the tenancy agreement is a fixed term tenancy agreement, is not earlier than the date specified as the end of the tenancy.

(3) A notice under this section must comply with section 45 [form and content of notice to end tenancy]*.*

Conclusion

The tenants' applications are allowed. The Notice to End Tenancy is cancelled and the tenancies will continue. As the tenants have been successful in setting aside the Notice, the tenants are entitled to recover the individual filing fees paid for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlord.

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: September 20, 2016

Residential Tenancy Branch