Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Aspen Place
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, LRE, RR

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to have the landlord comply with the *Manufactured Home Park Tenancy Act (Act)*, regulation or tenancy agreement; to restrict the landlord's access to the site; and a rent reduction.

The hearing was conducted via teleconference and was attended by the tenant; her advocate; the landlord and his agent.

At the outset of the hearing the tenant's advocate asked if I had received a faxed submission with an outline of the applicant's arguments and response to the respondent's submissions and numbered pages of evidence. At the time of the hearing I had not received this faxed submission. While it did arrive later, I have not considered this submission.

Residential Tenancy Branch Rule of Procedure 3.14 states that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing. As the tenant did not submit these documents until the day before the hearing, and there is no evidence that they could not have been served sooner, I find the submission is too late for consideration.

In regard to the delay in the writing of this decision I note that Section 70 (1) (d) of the *Act* stipulates that a decision of the director must be given promptly and in any event within 30 days after the proceedings conclude. I also note that Section 70(2) states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1) (d). I apologize for the delay.

Issue(s) to be Decided

It must be determined if the tenant is entitled to an order to have the landlord comply with the *Act*; to suspend or set conditions on the landlord's access to the manufactured home park site; and to a rent reduction, pursuant to Section 21, 22, 23, 26, 27, 32, 34, and 37 of the *Act*.

Background and Evidence

Specifically the tenant seeks to resolve the following issues:

- An order to have the landlord issue a 12 Month Notice to End Tenancy for Landlord's Use of Property, including the applicable compensation, because the landlord intends to convert the site to a Recreational Vehicle park instead of a Manufactured Home Park;
- An order to restrict access to the site because the landlord entered the site and has now reduced the size of the site;
- A rent reduction for the loss of garbage pick-up and decrease in electrical facility for heat and heat tape; and
- A rent reduction for anticipated loss of quiet enjoyment when the park is converted to allow more transient campers than permanent residents.

The tenant has submitted into evidence a copy of a tenancy agreement signed by the tenant and the previous owner of the park on December 2, 2016 for a month to month tenancy beginning on October 1, 2013 for a monthly rent of $360.00 due on the 1st of each month. The agreement stipulates that electricity is included in rent up to $120.00 per month with the excess being the tenant's responsibility.

The agreement indicates that there is a 2 page addendum with 26 additional clauses regarding the tenancy. Of relevance to these proceedings are clauses 16, 18, and 19. Clause 16 stipulates that "heat tapes must be installed and used during cold weather to ensure that water lines do not freeze up. Clause 18 states that "all garbage must be placed in plastic bags and tied and placed at the front of the mobile home on the day of pick-up". And clause 19 states that "utility bills are the responsibility of the tenant from the date of occupancy until disconnected by utility authourity". The tenancy agreement also includes a site map indicating the tenant's lot to be 30 feet wide.

The landlord submits in regard to the tenancy agreement submitted by the tenant that "considering the date of the arbitration of November 1, 2016 and the fact that the tenancy agreement is back dated to October 1, 2013 "the former owner was pressured to sign a MHPTA form to prevent a monetary settlement". The landlord provided no indication of how they had any knowledge as to how the former owner felt when they signed the tenancy agreement.

Since the signing of the tenancy agreement resulted from a settlement between the tenant and the former owner at a previous hearing before an arbitrator and the issue under dispute was not a monetary claim, I don't find the landlord's submissions on this point to provide any insight into the former owner's thoughts.

The landlord writes:

> "AP is aware that often Recreational Vehicle Owners do become tenants within the RV Park. However, we do not want to have the Manufactured Home Park Tenancy Agreement for our RV Campsites. Should we offer the RV Owners the opportunity to become a part of our Manufactured Home Area, we would sign the Manufactured Home Park Tenancy Agreement (MHPTA) with them. If we chose to have a tenancy agreement with RV Owner in the RV Camping areas, the tenancy would not be on a MHPTA form."

The landlord submits that when they purchased the property in February 2017 the tenant was advised of their plan to move all long term tenancies into the Manufactured Home Park adjacent to the RV Park. The landlord submitted a map of the landlord's allocation stating that the "land designation at date of purchase was depicted in the drawing and it had been that way for approximately 20 years prior to purchase. The landlord submits that the land usage is for RV camping and as such there is no conversion of the allocation of the landlord in either section of their property.

The tenant submits that the landlord has indicated that they intend to change the site where she currently resides to an RV campground and that they have told her that they will move her home from its current site into a new site; that her rent will be the same but that she will be responsible for the payment of all utilities. The tenant seeks to have the landlord issue to her a 12 Month Notice to End Tenancy for Conversion of Manufactured Home Park.

In the alternative, the tenant seeks a rent reduction in anticipation of the loss of quiet enjoyment she will suffer when the RV campground is used by more transient type residents.

The landlord submits that they do not wish to end the tenancy but rather they wish to continue it and move the tenant into the section of their property that they wish to have all the manufactured home park tenancies. The landlord submitted that included in this move would be a rent reduction from $360.00 to $335.00 in recognition of the requirement to pay utility costs.

The tenant also submits the landlord has changed the electrical service to the site. She submits that she is concerned that the new electrical service will require her to pay for service to a neighbouring site. The tenant submits that she "spoke with an electrician and was told "that the post where the new RV plug was installed is only connected to her site"

The tenant submits that in addition when the landlord changed the electrical service she could no longer plug in her heater or connect plug in her heat tape which is a requirement under tenancy agreement, as per Clause 16.

The landlord testified that the electrical upgrade was necessary as the existing system was unsafe. The landlord's position is that the provision of heat is not their

responsibility. The landlord also submits that if the tenant had been using to electrical connection during her tenancy she was using the electrical outlet for the adjoining site.

The tenant also provided that the landlord entered her site sometime between April 27, 2017 and May 1, 2017 and made significant changes to the site including reducing the size of the lot by 200 square feet.

In response the landlord has provided a photograph showing where the tenant had expanded her usage of the site from the 30 feet allotted to approximately 48 feet. They submit that they had to make the changes in preparation for use of the neighbouring site.

Analysis

Residential Tenancy Policy Guideline 9 entitled Tenancy Agreements and Licenses to Occupy states that it "is intended to help parties to an application understand issues that are *likely* to be relevant". The two page document is intended to provide some general guidance to a plethora of circumstances and cannot possibly be expected to apply to all circumstances, arrangements or agreements.

The Guideline suggests the following considerations to help determine if a tenancy exists:

Indicator
1. Payment of a security deposit is not required.
2. Owner retains access to or control over portions of the site.
3. Occupier pays property taxes and utilities but not a fixed amount for rent.
4. Owner retains the right to enter the site without notice.
5. The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.
6. The parties have agreed the occupier may be evicted without any reason or may vacate without notice.
7. The manufactured home is intended for recreational rather than residential use.
8. The home is located in a campground or RV park, not a Manufactured Home Park.
9. Rent is calculated on a daily basis, and G.S.T. is calculated on the rent.
10. Property owner pays utilities such as cable vision and electricity
11. There is no access to services and facilities usually provided in ordinary tenancies, e.g. frost-free water connections
12. Visiting hours are imposed

For example, in the chart above that outlines each of the factors provided in Guideline 9, Indicator 1 stipulates that payment of a security deposit not being required is a factor that a tenancy is not indicated. Clearly this indicator applies to the *Residential Tenancy Act* as the *Act* does not allow landlords of manufactured home parks to collect a security

deposit. Indicators 7 to 12 were developed specifically to assist in determining if the *Act* applies to recreational vehicles such as travel trailers.

In accordance with the guideline that states “The written contract suggests there was no intention that the provisions of the *Manufactured Home Park Tenancy Act* apply”, I find the tenant and the former owners of the property did enter into a written tenancy agreement that specifies that the *Act* applies to the relationship.

I note from the submissions of both parties, the tenant pays electrical utility costs; the landlord provides a year round water supply; the tenant pays a fixed monthly rent that is not calculated based on a daily rate and does not include GST. I also note that the home may have been intended to be a recreational vehicle when it was built, however since the tenant has been living in it on this site for the past 3 ½ years I find it is intended and has been used by the tenant to be used as her home.

I also note that while the landlord has submitted that the intended use of the section of the property where this home is parked is to be used as a campground, at the time they purchased the property there were at least 2 other occupants that had long term tenancies in this section.

Section 2 of the *Act* states: “Despite any other enactment but subject to Section 4, this *Act* applies to tenancy agreements, manufactured home sites and manufactured home parks.” In order to have the *Act* apply to the relationship between these two parties all three of these components must be a constituent of that relationship.

Section 1 defines “tenancy agreement” as an agreement, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities. This section also defines “tenancy” as a tenant’s right to possession of a manufactured home site under a tenancy agreement.

This section also provides the following relevant definitions:

- "manufactured home" means a structure, whether or not ordinarily equipped with wheels, that is designed, constructed or manufactured to be moved from one place to another by being towed or carried, and 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; and

- "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.

I also note that when property that is subject to any tenancy agreement under the *Act* is transferred to a new owner the obligations of landlord are also transferred to the new owner and they must owner the existing tenancy agreement.

Based on the above and despite the landlord's assertions that if they chose to have this tenancy fall under the *Act* it would be in the other part of their property then and only then would they enter into a tenancy agreement and that the previous owner felt pressured to sign a tenancy agreement, I find that a tenancy agreement exists between the parties.

As a result, I accept jurisdiction over the matters raised in the tenant's Application for Dispute Resolution in relation to her tenancy. In addition, I order the landlord must comply with the Manufactured Home Park Tenancy Act in all matters related to this tenancy.

In regard to the tenant's request that the landlord issue her a 12 Month Notice to End Tenancy for Conversion of Manufactured Home Park, I find that I cannot order the landlord to issue such a Notice if the landlord does not want to end the tenancy.

I note that if the landlord wishes to move the tenant to a new site in the section of the property that they want to be the manufactured home park and out of the area they want as the RV campground then they must do so by mutual agreement negotiated between the parties. If the landlord wants only to have this tenancy ended then it must be ended in accordance with Section 37 of the *Act* which provides how a tenancy will end.

Section 23 of the *Act* stipulates that a landlord must not enter a manufactured home site that is subject to a tenancy agreement for any purpose unless one of the following applies:

> (a) The tenant gives permission at the time of the entry or not more than 30 days before the entry;
> (b) At least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
>> (i) The purpose for entering, which must be reasonable;
>> (ii) The date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
> (c) The landlord has an order of the director authorizing the entry;
> (d) The tenant has abandoned the site;
> (e) An emergency exists and the entry is necessary to protect life or property; or
> (f) The entry is for the purpose of collecting rent or giving or serving a document that under this *Act* must be given or served.

Based on the submissions of both parties, I find there is insufficient evidence provided by the tenant to restrict the landlord's access to the site any further than what is outlined in Section 23. Should the landlord fail to comply with these requirements in future, the tenant may apply for a restriction of access and compensation.

In regard to the site size being reduced by 200 square feet, as claimed by the tenant, I find the landlord has established that the tenant had spread out her belongings to encroach on other sites to an extent not allowed as depicted in the site map provided by the tenant as part of the tenancy agreement. As such, I find the landlord did not "reduce" the site size but rather "reclaimed" space encroached upon by the tenant. I dismiss this portion of the tenant's claim.

Section 21(1) of the *Act* provides a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the manufactured home site as a site for a manufactured home, or providing the service or facility is a material term of the tenancy agreement.

Section 21(2) states a landlord may terminate or restrict a service or facility, other than one referred to in subsection if the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

In regard to the collection of garbage, I find the landlord has changed the service of collection of garbage from the tenant putting in front of her site to having to take it to a bin. I find that this is a restriction of the service allowed for in Clause 18 of the tenancy agreement addendum. As such, I order the landlord reinstate the service immediately and if they chose to restrict the service again in the future they must do so in accordance with Section 21. I will not order a rent reduction at this time, in part, because until this decision the landlord believed this tenancy was not governed by any obligations under the *Act*. As a result, I dismiss this portion of the tenant's claim for a rent reduction for garbage collection.

However, I find that the landlord's changes to the electrical system are not a restriction to any service provided but in fact an upgrade. I find the tenant has provided no evidence to support her assertion that she "may" be charged costs for the site next to her or that she cannot no longer use a heat tape as is her obligation under Clause 16 of the tenancy agreement addendum. I see no reason that the tenant cannot obtain any appropriate adapter to allow her to connect her heat tape.

As such, I dismiss this portion of the tenant's claim for a rent reduction for changes to the electrical service.

Section 22 of the *Act* stipulates that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) Reasonable privacy;
(b) Freedom from unreasonable disturbance;

(c) Exclusive possession of the manufactured home site subject only to the landlord's right to enter the manufactured home site in accordance with section 23; and
(d) Use of common areas for reasonable and lawful purposes, free from significant interference.

In regard to the tenant's request for a rent reduction for anticipate loss of quiet enjoyment, I find her claim is premature. A landlord is not obligated to compensate a tenant for something that may or may not occur. While both parties anticipate that there may be a loss of quiet enjoyment if the tenancy continues once the landlord starts putting transient campers in neighbouring sites I encourage them to negotiate additional terms to the existing tenancy agreement in regard to this issue. However, for the purposes of this Application, I dismiss this part of the tenant's claim.

While I acknowledge that the landlord was holding off on moving the tenant's home temporarily from the site so that they could complete some work to the site, I make no specific order on this issue other than to order that whatever work they complete they must do so in accordance with all of their obligations under the *Act*.

Conclusion

As noted above, I order that this is a tenancy governed by the *Act* and that both parties must comply with the terms of the tenancy agreement signed by the tenant and the previous owner in December 2016; the *Act* and the Manufactured Home Park Tenancy Regulation.

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: August 4, 2017

Residential Tenancy Branch