



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC BORDER RV PARK
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

The applicant seeks damages claiming that she is a tenant and that the landlord has interfered with her enjoyment of her home, harassed, threatened, stalked and slandered her and has wrongfully seized personal property of hers.

The landlord argues that the *Manufactured Home Park Tenancy Act* (the “Act”) does not apply.

The initial question of jurisdiction was dealt with and proved conclusive.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Is the relationship between the parties governed by the *Act*?

Background and Evidence

The tenant resides in her “fifth wheel” trailer in the landlord’s “RV Park.” She has resided there since March 2015. Her trailer was apparently removed by a bailiff in March of this year. The monthly rent or charge was originally \$600.00 and ultimately \$650.00 per month. She paid an extra \$10.00 per month for wifi service.

The park is an “RV Park” meaning a “recreational vehicle” park and is described as such in all the documents presented during this hearing.

The tenant's trailer is designed as a recreational vehicle. It is on wheels and is designed to be hooked to a motorized vehicle and towed from place to place.

Generally, trailers of this sort are intended for recreational use and not for long term accommodation. However, the tenant has converted the trailer into a full time residence for herself. From the photos she has provided of the interior of the trailer, it gives the appearance of being a very well appointed, if small, manufactured home. Further, she has insulated the water and sewer attachments for the trailer and has skirted its exposed lower portion to allow for year round use. She has landscaped the area around the trailer. She has placed patio blocks outside and has developed a garden and patio area.

At the start of her stay in the park the tenant paid the landlord \$100.00 as security for payment of Hydro bills. It appears that each spot or site in the park has its own power meter. The tenant is responsible to pay for that power.

The landlord submits that the tenant's site is a recreational vehicle "pad." He says there are no manufactured homes in the park. He denies that the tenant has exclusive possession of the pad.

He says that there are 119 spots in the park. The average stay on each spot is a bit over a month. He does not dispute the tenant's assertion that some folks have rented spots for years. He notes that the landlord occasionally moves trailers around in the park to better accommodate power and servicing requirements. This trailer has not been moved. He says some occupants in the park rent daily and some weekly.

The landlord submits that the park is a vacation resort with a pool and sauna. Cablevision is provided at no charge

Both parties referred to the rental receipts issued by the landlord. The receipts all contain a "notice to guest" provision which states that "this property operates under BC Guidelines "license to occupy" and reserves the right to remove anyone who does not comply with park rules and regulations."

The receipt states "[m]aximum stay is 30 days renewable at the Park's discretion."

The landlord says he has a receipt signed by the tenant but it was not available at the hearing.

Analysis

The question is whether or not the relationship between the parties is one of landlord and tenant under the *Act*.

The *Act* defines a “manufactured home” as

"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;

The tenant's trailer comes within that definition but that is not determinative as to whether or not the *Act* applies. Section 3 of the *Act* states that the *Act* applies “to tenancy agreements, manufactured home sites and manufactured home parks” and so those three areas must be inquired into.

“Tenancy” and “tenancy agreement” are defined in the *Act* as:

"tenancy" means a tenant's right to possession of a manufactured home site under a tenancy agreement;
"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 tenancy agreement if any, is to be found in the rent receipts. There is no other written document between the parties. Though none of the receipts presented at hearing had been signed by the tenant, the receipts are basically the same and I find that the tenant by having continued her rental for over two years, each month receiving the same basic receipt, has implicitly accepted the terms set out.

The receipt terms make it clear that the tenant's right to her site is a “licence to occupy” the site. That term is important because the *Act* does not apply to an occupation of land that would, under the common law, be considered a license to occupy as opposed to an occupation of land with a right to exclusive possession.

Residential Tenancy Policy Guideline 9, “Tenancy Agreement and Licenses to Occupy” addresses the difference between manufactured home park tenancies, which are covered by the *Act* and recreational vehicle or other sites, which are not. Of particular note, it says:

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.

In this case the manufacture home is of a type intended for recreational use rather than residential use though the tenant herself intends it for full time residential use.

The trailer is located in a campground or RV Park. The Notice to Guests portion of the tenant's receipts refer specifically to "campers."

There is no evidence about zoning on the property.

The rent, at least the tenant's rent, is calculated on a monthly basis and G.S.T is calculated on the rent.

The landlord pays for cablevision in the park. The tenant pays her own electrical usage costs.

The connections available for water and sewer services do not appear to be "frost free" though the tenant has insulated them herself. The park has a pool and sauna, available to guests at no charge.

There is no evidence of restricted hours. The Notice to Guests refers to "park rules and regulations" but they were not referred to during the hearing.

Another factor is that the Notice to Guests sets a maximum stay of 30 days in the park "renewable at the Park's discretion." In my opinion this provision would be a defense against any claim by the landlord that he is entitled to the notice required under the *Act* from the tenant if she terminated her tenancy.

Considering these factors, particularly the reference to “license to occupy” in the Notice to Guests and the 30 day limitation on stays, indicate that the relationship is not one landlord and tenant under the *Act*. Though the tenant has lived there a considerable period and has converted her trailer into her permanent residence, her legal relationship with the respondent remains as a park guest.

Regarding the remaining two areas, the *Act* provides:

"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;

Since the tenant does not have the right to exclusive possession of her site, merely a license to occupy it, the site cannot be considered a manufactured home site and, so far as her case is concerned, the park cannot be considered to be a manufactured home park.

Conclusion

I find that the tenant's relationship with the landlord is not a tenancy agreement under the *Act* and so the Residential Tenancy Branch dispute resolution services are not available to her. I make this finding with some regret because the tenant's alternative is to seek relief through the court system which will involve further delay and increased cost.

The tenant's application must be dismissed for want of jurisdiction.

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 13, 2017

Residential Tenancy Branch