



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SOUTH OKANAGAN VENTURES, LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* ("the Act") for a rent reduction as a result of amenities agreed upon but not provided by the landlord/respondent pursuant to section 58 of the Act as well as an additional monetary amount for pain and suffering or loss of quiet enjoyment pursuant to section 60.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenant's application for dispute resolution package including notice of hearing and documentary evidence. The tenants confirmed receipt of the landlord's evidentiary submissions for this hearing.

Preliminary Issue: Does the *Manufactured Home Park Tenancy Act* confer upon the RTB the statutory authority to hear the dispute between these parties?

By way of background, a "Manufactured Home Site Tenancy Agreement" was signed by both parties on September 25, 2015. The Agreement includes the following features;

- The names of both tenants and the landlord business name;
- a 46 year term of "tenancy";
- a "rental" payment of \$525.00 payable on the 1st day of the month;
- a notation under rent reads, "riverfront lot!";
- an 11 page addendum; and
- signatures of both parties (2 tenants, 1 landlord representative).

The applicants provided undisputed testimony at this hearing that they purchased a home from the respondent pre-construction. The applicants testified that they chose the design of a home based on model homes and design options. The applicants testified that, after purchasing their home, they applied to rent a parcel of land from the

respondents upon which their home would be built. The applicants testified that they were given a choice between a riverside ("view") lot or a non-riverside lot. The applicants testified that the rental for the view lots was \$525.00 while the non-view lots were available for \$435.00 per month. The applicants testified that they chose the riverside option and chose their lot based on the information provided to them by the respondent's representatives. The applicants testified that, when they moved in to their home, their view was obstructed by a tree and a pump-house outside but near to their property/lot.

The respondents testified that the applicants were shown the lots prior to their home purchase and their decision regarding rental lot. The applicants testified that the pump-house was not in place when they viewed the lots and that they were never provided with detailed lot information. The applicants claim that their foremost amenity (their view) was agreed upon but not provided by the respondents. The applicants testified it was difficult to visualize the final project when they were making their decisions.

With respect to the issue of whether this dispute falls under the *Manufactured Home Park Tenancy Act*, I note that the respondents did not oppose a finding that this matter was not in the jurisdiction of the Act however the respondents indicated on the simple facts that; the agreement is written as a manufactured home park tenancy; the residential property is described in their signage and company information as a manufactured home park; and the tenants are subject to a monthly rental payment for their site or parcel of land with their own home on that land.

The applicants argue that this matter falls under the scope of the *Manufactured Home Park Tenancy Act*. They argued that their purchased home is a modular home that can be taken apart and relocated (it was constructed off site and delivered to site/ land lot). The applicants argued that their home can be moved with a crane. They argued that their home is intended as living accommodations. The applicants submitted that the monthly amount they paid was described as "rent" and for all of these reasons, this agreement between the two parties amounted to a tenancy.

I find that this agreement contemplates an extended period (46 years) that is not usually contemplated in relation to the definition of a tenancy. The *Residential Tenancy Act* strictly prohibits such a lengthy term and while the *Manufactured Home Park Tenancy Act* does not strictly prohibit a tenancy of this length, I find that the prohibition of a lengthy *Residential Tenancy Act* tenancy agreement would equally apply to the *Manufactured Home Park Tenancy Act*. Within the *Residential Tenancy Act*, tenancy agreements with terms longer than twenty years are excluded as are, in most cases,

combined tenancy agreements that amount to a twenty year period. As stated in Policy Guideline No. 27, "the RTB will likely decline jurisdiction over any dispute between the parties.

Further to consideration of the length of this tenancy and perhaps more significant in determining whether or not the *Manufactured Home Park Tenancy Act* applies to this agreement, the agreement that the tenants pay a monthly fee for the use of property/land in this particular case is ***inextricably linked*** to the sale and purchase of a home from the respondent. Generally speaking, neither of the Acts apply to a relationship between a seller and purchaser.

Residential Tenancy Policy Guideline No. 27 addresses "jurisdiction",

If the relationship between the parties is that of seller and purchaser of real estate, the Legislation would not apply as the parties have not entered into a "Tenancy Agreement" as defined in section 1 of the Acts. It does not matter if the parties have called the agreement a tenancy agreement. If the monies that are changing hands are part of the purchase price, a tenancy agreement has not been entered into.

...

In the case of a tenancy agreement with a right to purchase, the issue of jurisdiction will turn on the construction of the agreement. If the agreement meets either of the tests outlined above [if the relationship between the parties is that of seller and purchaser of real estate or if the tenant takes an interest in the land and buildings which is higher than the right to possession, such as part ownership of the premises], then the Acts may not apply. However, if the parties intended a tenancy to exist prior to the exercise of the right to purchase, and the right was not exercised, and the monies which were paid were not paid towards the purchase price, then the Acts may apply and the RTB may assume jurisdiction. Generally speaking, the Acts apply until the relationship of the parties has changed from landlord and tenant to seller and purchaser.

[emphasis added]

In these particular circumstances, the parties ask that I look only at the manufactured home park tenancy agreement in making a determination as to whether the tenants are entitled to compensation. However, in these particular circumstances, I find that the tenancy agreement was created after the applicants purchased a modular home from the respondent. While the tenancy agreement has been, in format, prepared separate

and apart from the sale of the modular home, the very nature of the disagreement and application requires examination of the dealings between the applicant and landlords when purchasing the modular home.

Given the distinctions discussed above and the considerations regarding the definition of a manufactured home as considered below, I find that this living agreement and the dispute before me is firmly based on consideration of the sale of the modular home by the respondents to the tenants.

As stated above, I find that the disagreement in this matter is also inextricably linked to the purchase of the home and the concurrent decision on choosing a lot for the home to be placed on. Furthermore, I find that the type of home described in testimony and in the documentary materials submitted for this hearing do not meet the definition of the *Manufactured Home Park Tenancies Act*. Section 1 of the Act provides the definitions as they apply under the *Manufactured Home Park Tenancies Act*,

1 In this Act:

"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...

I find that the home described by both parties and represented in the documentary evidence does not fall under the jurisdiction of the Residential Tenancy Branch. In providing a description of the home, the parties referred to the residence as a "modular home". They described a residence that is constructed off site, delivered to the park site and placed on a pad rented by the applicants. While applicant A described a home that is built elsewhere and put on the site in a condition that allows it to be removed again, the landlord described the process of relocating the modular home as a significant cost and a significant amount of time to do so.

In Webster's Dictionary, a modular home is defined as "of, relating to, or based on a module..." and "constructed with standardized units or dimensions for flexibility and variety in use". The definitions of materials to construct modular homes refer to the ability to mix and match pieces of the home to customize for its specific purpose. It refers to the nature of the building materials which are, according to reference material and the landlord at this hearing, typically transported by flat-bed trucks.

I find that, like any other structure built on land, a modular home can be moved by de-construction when and if necessary but that its mobility is not a primary feature of this type of home. Therefore, the modular home does not fall under the *Manufactured Home Park Tenancy Act* in that a modular home and in particular this modular home does not meet the criteria of the Act as it is not designed, constructed or manufactured to be moved from one place to another by being towed or carried. I find that the modular home is not the equivalent of the manufactured home.

While I understand the nature of the applicants' argument that this is a manufactured home and that the "landlords" have failed to meet the terms of their agreement, I find that the nature of this dispute is a real estate contract dispute and not a manufactured home park tenancy dispute. The applicants purchased a home and, as part of that agreement, the applicants were required to rent a pad/site from the respondents/seller. These two agreements are connected to one another. Therefore, the terms of the rental of the pad/site is tied to the applicants' choice of home and the nature of their view. This agreement was made in direct connection to the sale of the modular home, and therefore should be considered and enforced as such.

Based on all of the reasons above, I do not have jurisdiction to consider this claim.

Conclusion

I decline to hear this matter as I do not have jurisdiction to do so.

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 25, 2017

Residential Tenancy Branch