



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI, FFT, OLC

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution (the Application) pursuant to the *Manufactured Home Park Tenancy Act* for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) pursuant to section 49 of the Residential Tenancy Act;
- an order regarding a disputed additional rent increase pursuant to section 36;
- an order requiring the applicant to comply with the *Act*, regulation or tenancy agreement pursuant to section 55; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 65.

The landlord and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

While I have turned my mind to all the documentary evidence, including the testimony of both parties, not all details of the respective submissions and/or arguments are reproduced here.

Preliminary Matters - Jurisdiction

The tenant stated that he intended to dispute the Two Month Notice under the *Manufactured Home Park Tenancy Act* but that the on-line service portal directed the respondent to dispute the Two Month Notice under the *Residential Tenancy Act* as there is no option for a Two Month Notice under the *Manufactured Home Park Tenancy Act*. The applicant requested to amend their Application to be heard under the *Manufactured Home Park Tenancy Act*.

The tenant submitted that he has a travel trailer that he lives in which is on a recreational vehicle pad (RV pad) on the landlord's property. The tenant further submitted that a recreational vehicle, such as the tenant's travel trailer, could be

considered to be a manufactured home if it is being used as living accommodation. The tenant testified that he has an underground water, power source and sewer connection at the RV pad and pays \$400.00 per month for the exclusive use of the RV pad which includes utilities.

The landlord testified that neither the *Residential Tenancy Act* nor the *Manufactured Home Park Tenancy Act* should have jurisdiction on the tenant's Application as the manufactured home in question is a recreational travel trailer which is primarily used for short term vacation use during travel and camping that can be towed with a bumper hitch.

Section 1 of the *Residential Tenancy Act* defines a tenancy agreement as an agreement between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

I find that that tenant is not renting a rental unit as they own their travel trailer and are only renting a site in the form of an RV pad to park their travel trailer. For this reason I find that this tenancy is not governed by the *Residential Tenancy Act*.

A manufactured home is defined under the *Manufactured Home Park Tenancy Act* (the *Act*) as:

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;

Residential Tenancy Policy Guideline # 27 states that "a travel trailer occupying a manufactured home site may meet the definition of a manufactured home."

I find that the tenant is using their travel trailer as their living accommodation and not strictly for recreational use. For this reason I find that the tenant's travel trailer meets the definition of a manufactured home under the *Act* in these specific circumstances.

Section 2 of the *Act* stipulates that it applies to tenancy agreements, manufactured home sites and manufactured home parks. A manufactured home site is defined by the *Act* as a site in a manufactured home park which is rented to a tenant for the purpose of being occupied by a manufactured home. A manufactured home park is defined as a

parcel or parcels on which one or more manufactured home sites that the landlord rents and common areas are located.

Residential Tenancy Policy Guideline # 9 clarifies the difference between a license to occupy and a tenancy agreement and states that “Under a tenancy agreement, the tenant is given exclusive possession of the site for a term, which can include month to month....If there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created.”

I find that the landlord has a parcel that they have rented for the exclusive use of the tenant for the purpose of being occupied by the tenant's travel trailer, which I have found meets the definition of a manufactured home as the tenant uses it as living accommodation.

For the above reasons I find that the relationship between the landlord and the tenant is a tenancy agreement which is governed by the *Act* and that I have jurisdiction to hear the tenant's Application under the *Act*.

The landlord acknowledged receipt of the Application sent by way of registered mail to him on October 06, 2017. In accordance with section 82 of the *Act*, I find the landlord is duly served with the Application.

The landlord acknowledged receipt of the tenant's evidence sent by way of registered mail to him on November 21, 2017. In accordance with section 81 of the *Act*, I find the landlord is duly served with the tenant's evidence.

The tenant acknowledged receipt of the respondent's evidence which was posted to the door of the tenant's manufactured home on November 26, 2017. The applicant stated that they did not have a chance to respond to the respondent's evidence. I find the landlord's evidence was served in accordance with Residential Tenancy Branch Rule of Procedure 3.15 which allows for evidence to be received by the applicant, from the respondent, not less than seven days before the hearing. In accordance with section 81 of the *Act*, I find the tenant is duly served with the landlord's evidence

The tenant testified that they received the Two Month Notice, which was posted to the door of their manufactured home on September 24, 2017. In accordance with section 81 of the *Act*, I find the tenant is duly served with the Two Month Notice.

Issues(s) to be Decided

Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession for landlord's use?

Is the tenant entitled to an order regarding a disputed additional rent increase?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord pursuant to section 65 of the *Act*?

Background and Evidence

The landlord and the tenant both provided written evidence that this tenancy began in June of 2016 with a monthly rent of \$400.00 which includes water, cable and electricity.

A copy of the signed Two Month Notice dated September 24, 2017, with an effective date of December 01, 2017, was provided in evidence by the tenant. The reason indicated on the Two Month Notice is that the rental unit will be occupied by the landlord or the landlord's close family member.

The tenant also provided in documentary evidence:

- a copy of a letter from the landlord to the tenant dated May 22, 2017, asking the tenant to sign a new lease and advising the tenant of an increase in the monthly rent from \$400.00 to \$520.00 effective as of September 01, 2017;
- a copy of a letter from the tenant to the landlord dated May 25, 2017, where the tenant indicates that they will not sign a new lease and that the allowable rent increase for 2017 is 3.7%; and
- a copy of the details of the dispute from the tenant addressing the landlord's requested rent increase, the landlord's hostile behaviour when the tenant refused the rent increase and the landlord moving vehicles into the yard where the RV pad is located which the tenant states is not in compliance with section 21 of the *Act* regarding terminating or restricting services or facilities.

The landlord provided in documentary evidence

- a copy of a letter written by the landlord outlining the details of the dispute and the landlord's position regarding the dispute; and
- copies of text messages exchanged between the landlord and the tenant.

The landlord submitted that he discussed renting the RV pad with the tenant but that no deal was finalized as work needed to be done to dig a trench for a sewer line. The landlord stated that the tenant took it upon himself to do the work on the sewer trench without the landlord's permission but that the landlord accepted this work and offered the tenant a cable wire to run in the trench as well if the tenant paid for the cable installation and hook up.

The landlord testified that the applicant wanted to bring his trailer on to the property for storage before officially moving onto the site in August 2016 but that the tenant moved onto the site before any rental agreement was reached and without the landlord's permission. The landlord stated that he was suffering health issues at the time and allowed the tenancy to continue. The landlord submitted that his requested rent increase is in line with what the tenant would pay at other facilities. The landlord submitted that he needs the RV pad for another RV that his wife's daughter is going to live in while she attends university.

The tenant testified that he has a tenancy agreement with the landlord and has been in touch with the Residential Tenancy Branch to confirm this. The tenant stated that he did not sign the lease with the landlord because it is a 30% rent increase which is more than the allowable rent increase under the *Act*. The tenant further stated that he had a verbal agreement to remain on the site until June 30, 2018, and he needs that time to find another suitable place for his travel trailer and other vehicles he has stored at the site.

Analysis

Section 42 of the *Act* allows a landlord to end a tenancy for landlord's use, not earlier than 12 months after the date the notice is received, when the landlord intends to convert the manufactured home park to non-residential use or a residential use other than a manufactured home park.

Section 49 of the *Residential Tenancy Act* allows a landlord to end a tenancy after the issuance of a Two Month Notice to End Tenancy for Landlord's Use of Property including to allow for the landlord or a close family member to occupy the rental unit.

I find that the Two Month Notice for the landlord's daughter to use the RV pad, pursuant to section 49 of the *Residential Tenancy Act* is not in compliance with any section of the *Manufactured Home Park Tenancy Act*. For this reason, the Two Month Notice dated September 24, 2017, is cancelled and is of no force or effect.

Section 34 of the *Act* states that a landlord must not increase rent except in accordance with sections 35 and 36 of the *Act*, which only allow for a rent increase served in the approved form, at least 3 months before the effective date of the increase by an amount calculated in accordance with the regulations or for an amount agreed to by the tenant. The current allowable rent increase for 2017 is 3.7%.

I find the landlord's letter to increase the rent dated May 22, 2017, to increase the monthly rent by \$120.00 effective as of September 1, 2017 does not comply with the *Act* as it is not on the approved form and is for an amount that exceeds what is allowable under the *Act*. I am also satisfied the parties do not have any written agreement in increase the rent by this amount.

For the above reasons, the landlord's letter to increase the rent by \$120.00 dated May 22, 2017, is cancelled and of no force or effect.

Section 55 (3) of the *Act* allows an arbitrator to make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, regulations or tenancy agreement.

Section 12 (b) of the Residential Tenancy Regulations states that a tenancy agreement must contain the boundaries of the manufactured home site, measured from a fixed point of reference.

I find that there is no written tenancy agreement submitted into documentary evidence which defines the boundaries of the manufactured home site beyond the RV pad and that I am not able to determine whether the landlord moving vehicles into the yard near the RV pad is in contravention of the tenancy agreement. I further find that the tenant still has their vehicles stored in this yard and the landlord's placement of their own vehicles in this same yard has not restricted the tenant's use of the yard for storage.

Section 22 of the *Act* protects a tenant's right to quiet enjoyment including but not limited to freedom from unreasonable disturbance. I accept the tenant's submission that the landlord was hostile when the tenant indicated that they would not comply with the requested rent increase.

I **order** the landlord to comply with the *Act* in all aspects of their tenancy agreement with the tenant, including respecting the tenant's right to quiet enjoyment of the

manufactured home site, providing the appropriate notices for increasing the rent and using the appropriate notices to end the tenancy permitted under the *Act*.

As the tenant has been successful in their Application, I allow the tenant to recover the filing fee for this Application from the landlord.

Conclusion

The Two Month Notice dated September 24, 2017, is set aside and this tenancy continues until ended in accordance with the *Act*.

The landlord's letter to increase the rent by \$120.00, dated May 22, 2017, effective as of September 01, 2017, is cancelled and of no force or effect.

I **order** the landlord to comply with the *Act* for all future notices and interactions with the tenant.

Pursuant to section 65 of the *Act*, I order that the tenant may reduce the amount of rent paid to the landlord from a future rent payment on one occasion, in the amount of \$100.00, to recover the filing fee for this application.

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: December 18, 2017

Residential Tenancy Branch