



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LIVINGSTONE RV PARK CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, FF, DRI

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant's application is pursuant to the *Manufactured Home Park Tenancy Act* (the "Act") for:

- an order regarding a disputed additional rent increase pursuant to section 43;
- authorization to recover his filing fee for this application from the landlord pursuant to section 65.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence submitted by the other party. As both parties have attended and have confirmed receipt of the notice of hearing package(s) and the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 83 of the Act.

Preliminary Issue(s)

The landlord has raised an issue of jurisdiction by stating that the tenant is a "camper" and is not subject to the Act. The landlord clarified that the park is home to both tenants and campers. The campers are subject to the park rules and are exempt from the Act. As such, the landlord and his agent clarified that their application for a monetary order

under the RTA was made in error and is withdrawn. No further action is required for the landlord's application.

However, the landlord still disputes that the RTB does not have jurisdiction in this matter. The landlord further argues that there is no signed tenancy agreement, no security deposit paid and the tenant does not pay any property or water taxes as required for all tenants. The tenant disputed this claim.

The tenant owns a Recreational Vehicle which he has resided in the park for the last 24 years. On January 1, 2018 the rent was raised by the landlord from \$495.00 to \$515.00 per monthly. The tenant was again given notice of a rent increase on April 1, 2018 to \$615.00. A dispute arose between the parties.

The landlord submits that the Residential Tenancy Branch does not have jurisdiction based on the following:

- The landlord owns a park which houses "Campers" Recreation Vehicles and tenants manufactured homes. The site rented by the tenant is a Recreational Vehicle.
- The Policy of the Park for extended stay guests provides that it is a daily rental and is not governed by the British Columbia Residential Tenancy Act. This is not a landlord and tenant agreement.
- The campers do not pay property tax or security deposits. The tenants in the manufactured homes are responsible to pay property tax and security deposits.
- The park pays utilities such as cablevision and internet wi-fi as a courtesy while the tenants at the manufactured home section pay their own including all the utilities.
- Visiting hours are imposed.
- With the manufactured home tenants, there is a tenancy agreement. However, there is no contract with the RV guest (Campers).
- The landlord took over the operation of this park and has been run this way for the last 40 years.

The tenant testified as follows;

- The verbal agreement he had with the manager when he agreed to rent the site
- There are no signed documents regarding his stay with the landlord.
- The landlord increased the rent by \$20.00 per month starting January 1, 2018. He paid the increased rent. The tenant was again notified of another rent increase for April 1, 2018 to \$615.00 as per the attached letter from the landlord dated January 25, 2018.
- The tenant argues that his recreational vehicle is considered a manufactured home.

- The tenant disputed the landlord's claims that he does not pay utilities. No proof was offered as the landlord clarified that tenant's utilities were paid as part of the rent to the landlord. The tenant confirmed that a security deposit was not paid.

Policy Guideline #9 includes the following:

This Guideline clarifies the factors that distinguish a tenancy agreement from a license to occupy. The definition of "tenancy agreement" in the Residential Tenancy Act includes a license to occupy. However, the Manufactured Home Park Tenancy Act does not contain a similar provision and does not apply to an occupation of land that under the common law would be considered a license to occupy.

A license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or "licensee", is given permission to use a site or property, but that permission may be revoked at any time. Under a tenancy agreement, the tenant is given exclusive possession of the site for a term, which can include month to month. The landlord may only enter the site with the consent of the tenant, or under the limited circumstances defined by the Manufactured Home Park Tenancy Act¹. A licensee is not entitled to file an application under the Manufactured Home Park Tenancy Act.

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. For example, a park owner who allows a family member to occupy the site and pay rent, has not necessarily entered into a tenancy agreement. In order to determine whether a particular arrangement is a license or tenancy, the arbitrator will consider what the parties intended, and all of the circumstances surrounding the occupation of the premises.

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.

The arbitrator will weigh all of the factors for and against finding that a tenancy exists, even where the written contract specifies a license or tenancy agreement. It is also important to note that the passage of time alone will not change the nature of the agreement from license or tenancy.

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.

A landlord and tenant may enter into a tenancy agreement for rental of a manufactured home site upon which the tenant is entitled to bring a manufactured home. It is important to note that a binding tenancy agreement may exist even where there is no home on the site.

In considering the disputed evidence, I determined that the factors indicated that the arrangement between the parties is that of a licence to occupy and not a tenancy of a manufactured home pad for the following reasons:

- The manufactured home owners pay property taxes and pay a security deposit. This is not required by an occupant in a Recreational Vehicle.
- The Municipality has zoned this park for Recreational Vehicles and manufactured homes.
- There is a formal contract for the owners of the manufactured home. There is no such formal contract with the Recreational Vehicle section.

After weighing the factors available, I determined the relationship between the parties is a licence to occupy and that the Residential Tenancy Branch does not have jurisdiction. As a result I declined to hear the tenant's application.

Conclusion

I find that the relationship between the parties is not a tenancy agreement involving the rental of a manufactured home pad. Rather it is the licence to occupy a recreational vehicle site. As such, I find that the Residential Tenancy Branch does not have 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: April 30, 2018

Residential Tenancy Branch