



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE PARKLANDER MOTOR & TRAILER COURT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord to request clarification as to whether or not the agreement between the parties lies within the jurisdiction of the Manufactured Home Park Tenancy Act and Regulations. The Landlord is also requesting an order for payment of the filing fee.

The Landlord’s agent and the Tenant appeared for the scheduled hearing. I find that the notice of hearing was properly served and that evidence was submitted by all parties. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Issue to be Decided

Does the agreement for renting a site fall within the jurisdiction of the *Manufactured Home Park Tenancy Act* (“Act”)?

Background and Evidence

The Tenant submitted a timeline into evidence, which states that he purchased a unit in the park on July 20, 2009. The unit was already in place, on blocks and skirted; he has never moved it from that location. He started paying a monthly rent on that site the following month.

The Landlord operates the park. It consists of what the Landlord indicates as 34 recreational vehicle sites, 7 manufactured home sites and 5 tent sites. The business license which was submitted into evidence simply states that it is for "50 units, mobile home & tourist spaces".

The Tenant lives in the park full time and provided copies of his Medical Services Plan Invoice and CRA notice which show the address as his home address. Photographs were also submitted by both parties which show the home in the park and the registration stickers on the unit and plate.

On April 1, 2016, a notice posted at the Landlord's office addressed to "Tenants" to advise that the property had been listed for sale. A second notice to "Tenants" was posted June 1, 2016 which confirmed that the park had been sold and the rezoning process was beginning; residents would be notified once more information was known.

On June 1, 2017, "Tenants" were notified by a posted note that they would be receiving a 15 month notice to vacate on or before October 1, 2018. The formal notice to vacate was dated July 1, 2017 and read: "This letter is being served as your 15 month notice to vacate R.V. Site #____ on or before October 1, 2018." This was delivered to the Tenant and receipt is acknowledged.

On February 15, 2018, another letter was sent to remind tenants to vacate on or before October 1, 2018 and that the park will be closing on that date. The City of Surrey also sent a letter dated July 25, 2017 to "area resident" stating that there was an application for the development of 46 townhouse units on the property. The Tenant states he has heard of no further updates and no re-zoning has taken place.

The Tenant stated that he showed the park manager form RTB-31 and that she told him she did not need to use that to provide notice. He prepared a letter in reply dated February 20, 2018 which stated that the notices are invalid for termination of a tenancy under the *Manufactured Home Park Tenancy Act* and that he will not be vacating the site on October 1, 2018. The Tenant states that he has no plans to vacate the site.

The Landlord made this Application March 13, 2018, despite having argued that the legislation does not apply to this tenancy. The Application was unclear as to the relief sought by this office. When questioned, the Landlord stated that she does not believe this Act applies to this Tenant, but that she would like more clarity and a decision as to whether or not the Residential Tenancy Branch and legislation had jurisdiction.

The Landlord submitted excerpts from other legislation, including the *Manufactured Home Act*, which are intended to clarify standards in assessment for manufactured homes. It was argued that under that legislation and its regulations, a travel or tourist trailer is exempt.

The Landlord also provided a list of all units which he reports for assessment purposes, and notes that the Tenant's unit is not listed and not assessed because it is exempt under the definitions. She submitted photographs of stickers showing how the Tenant's unit was labelled as an "RV" while some of the other units on the property are labelled as "mobile home". She also states that the taxes remitted for GST confirm that the Tenant has an RV and that this is exempt from the tenancy legislation.

The Tenant replied by stating that he is not making any application for tax assessment on his home, and that his only dispute is with the notice to end the tenancy, which he argues does not comply with the Act that governs such tenancies.

Analysis

Although references were made to other legislation and rules which govern manufactured homes and recreational vehicles, the only legislation under which I have authority to make a decision under is the *Manufactured Home Park Tenancy Act*; accordingly, my comments are restricted to considering that piece of legislation only, with respect to the facts as presented to me.

Under section 1 of the Act, a "manufactured home" means a structure, other than a float home, 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 definition of a "manufactured home park" is: parcels on which one or more manufactured home sites that the same landlord rents or intends to rent and common

areas are located; a “manufactured home site” means a site within 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.

A “periodic tenancy” includes a tenancy which is on a monthly or other periodic basis. A “tenancy” is a tenant’s right to possession of a manufactured home site under a tenancy agreement.

RTB Policy Guideline 9 states as follows:

“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 reviewing the evidence and considering the legislation and policy guideline, I find the following: the Tenant’s residence is clearly a manufactured home under the definitions of this Act. This is the home that he uses to live in as his only residential premise, it has not been moved from the location nor used just as a recreational vehicle. It is used as a home on a rented site in a park zoned for manufactured homes, where it remains year-round.

The agreement between the parties to rent the site where it is located is clearly a periodic tenancy as defined under the Act. He has been there for almost 9 years, and it is clear that a tenancy had formed.

Monthly rent is paid by the Tenant to the Landlord. Furthermore, the Landlord indicates in its posted written notices that the residents are “tenants” which shows the intent to create a tenancy. This is not a temporary or seasonal visitor to a park, this is a permanent resident.

Accordingly, I find this tenancy falls within the jurisdiction of the Act.

Conclusion

I find that this is a tenancy that falls within the jurisdiction of the *Manufactured Home Park Tenancy Act* and regulations. The tenancy can only be terminated in compliance with the relevant sections of that Act, using proper form and content.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 11, 2018

Residential Tenancy Branch