



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RESORT ON THE LAKE RV RENTALS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, LRE, MNDCT, OLC, FFT

Introduction

This hearing was scheduled to deal with a Tenant's Application for Dispute Resolution filed on May 31, 2018 to resolve several issues under the *Manufactured Home Park Tenancy Act* (the Act). An Amendment was subsequently filed on July 2, 2018 whereby the applicant seeks monetary compensation. A hearing was held over two dates and both dates all parties appeared or were represented. An Interim Decision was issued on July 19, 2018 and should be read in conjunction with this decision.

The respondents took the position that the parties do not have a tenancy relationship to which the Act applies. Considerable submissions were presented by both parties, in writing and orally, with respect to the issue of jurisdiction. At the end of the second hearing session I reserved my decision with respect to jurisdiction and I informed the parties that if I was satisfied that the Act applies I would reconvene the proceeding to deal with the remedies sought by the applicant.

Although I was provided and considered a significant amount of submissions concerning jurisdiction, with view to brevity in writing this decision I have only summarized the most relevant evidence and submissions. Below, I proceed to address the issue of jurisdiction.

On another procedural matter, I noted that the rental unit address appearing on the proceeding documents appears to contain a spelling error in the street address of the property. I have amended the application to correct the spelling of the address.

Issue(s) to be Decided

Does the applicant have a tenancy agreement with either one of the respondents to which the *Manufactured Home Park Tenancy Act* applies?

Background and Evidence

The subject site is located in a recreational vehicle park ("the park") where the sites are individual strata titled lots. The individual lots have individual titles pursuant to a bare land

strata plan that was deposited in the land title office by the owner/developer in 2012. Also in 2012 a covenant was registered on the title of every strata lot. The covenant limits the use of a site by an owner to that of personal use by the owner or close family member of the owner. The covenant prohibits an owner from renting their site except if the site is placed in the rental pool that is managed by the rental management company. The covenant provides, in part:

- C. The Lands are zoned R11 and each Strata Lot may be rented to the public on a transient or a permanent basis pursuant to the terms and conditions of this Use Covenant as part of a recreational vehicle resort;
- D. It is desirable to limit the use and management of a Strata Lot by an owner by requiring the lease, rental or licence of a Strata Lot to be addressed exclusively through an Occupancy arrangement with the Manager to ensure consistent quality management for the benefit of the surrounding Strata Lots;
- E. Upon registration of the Bare Land Strata Plan in the Victoria Land Title Office and the subdivision of the property into 149 Bare Land Strata Lots, if the Manager in its sole and absolute discretion determines that a Management System is desirable, then the Manager will govern the lease, rental or licence of each Strata Lot to the public on behalf of the Strata Lot Owner or if rentals are no longer desirable in the sole discretion of the Manager, then it will cease to govern any lease, rental or licence of the Strata Lot until the Manager determines that it is once again desirable in its sole and absolute discretion to resume the lease, rental or licence of each of the Strata Lots;
- F. When not using their Strata Lot for Personal Use, the Strata Lot Owner may either leave the lot vacant or offer the Strata Lot for rent to the general public exclusively through the Manager's Management System provided such a system is desirable in the sole discretion of the Manager;
- G. The rental of an Owner's RV in RV Resort on the Lake to the general public is prohibited;

After depositing the strata plan, the owner/developer began selling lots but also entered into long term leases for other lots. The subject site was originally leased by the owner/developer to MM's mother but MM acquired the lease after her mother died. I heard that the covenant did not apply to sites that were leased by the owner/developer. I also heard that the owner/developer operated the rental management company until the last strata lot was sold by the owner/developer in January or February 2018. After the last strata lot was sold by the owner/developer the strata counsel acquired control of the rental management company.

While MM was a lessee of the subject site she entered into an agreement with the applicant, SR. The agreement with SR is entitled "Promissory Note" and was executed by MM and SR in September 2015 and October 2015. The Promissory Note does not appear to be drafted by a

lawyer or other professional familiar with drafting contracts; however, the signatures were witnessed.

The Promissory Note provides that MM agreed to sell a recreational vehicle to SR for the purchase price of \$10,000.00. The purchase price was to be paid by way of monthly instalments starting November 1, 2015 in a minimum amount of \$200.00 per month, with the principal balance to be paid in full by September 1, 2018. The Promissory Note was subsequently modified by the parties to require the full principal to be paid by September 1, 2017. The Promissory Note also required SR to pay a monthly “pad rental fee” of \$250.00 on the first day of every month and a “maintenance fee” of \$114.00 (but identified as being subject to change) to MM for a total minimum monthly payment of \$565.00. SR was also required to pay for his own cable, hydro, propane, and insurance.

In July 2017 MM purchased the subject site from the owner/developer and MM instructed SR to pay rent for the site to the rental management company. The rental management company required SR to pay \$700.00 per month for the summer months. SR objected and filed his previous Application for Dispute Resolution under the *Manufactured Home Park Tenancy Act* on July 31, 2017 seeking several remedies; including orders for MM to comply with the Act. MM also filed her own Application for Dispute Resolution under the *Residential Tenancy Act* on August 22, 2017 seeking an Order of Possession for the site due to breach of an agreement and unpaid rent and a Monetary Order for damages or loss. The two Applications were joined together and heard by me on October 26, 2017 (file numbers referenced on the cover page of this decision). During that hearing, the parties were in dispute with respect to a number of things, including: whether SR complied with his payment obligations for the purchase of the recreational vehicle; ownership of the recreational vehicle; whether a tenancy agreement existed; and, whether the *Manufactured Home Park Tenancy Act* applied to their agreement. Both parties ended up in agreement that the *Residential Tenancy Act* did not apply to their arrangement and I refused to accept jurisdiction to resolve MM's application since she filed under the *Residential Tenancy Act*. As seen in the decision I issued on November 3, 2017, I concluded that SR did not satisfy me that he owned the recreational vehicle rather than MM and I found SR did not meet his burden to demonstrate the *Manufactured Home Park Tenancy Act* applied to his arrangement with MM. Accordingly, I declined to accept jurisdiction to resolve their dispute under the *Manufactured Home Park Tenancy Act*.

Since the last hearing, several events transpired and a number of circumstances changed, including the following. I heard that in January or February 2018 the last site in the park was sold by the owner/developer. As a result, in March or April 2018 the rental management company (“ROTL”) once operated by the owner/developer came under the control of the strata counsel. ROTL representatives met with MM shortly thereafter and informed MM that they would be enforcing the land use covenants and strata by-laws and that she would be in violation of the covenant and by-laws.

On May 1, 2018 MM appointed the rental management company to manage her site with respect to rentals of the site. MM returned the payment she received from SR for the month of May 2018. MM retained legal counsel who wrote a letter to SR on May 10, 2018 demanding the balance of the recreational vehicle purchase price or MM would consider hiring the bailiff to repossess the recreational vehicle. SR paid the balance of the recreational vehicle to MM and on May 15, 2018 MM provided SR a duly executed transfer from to transfer the title of the recreational vehicle to SR.

ROTL required SR to pay the seasonal monthly rate of \$620.00 for the month of May 2018 and sign an "Occupancy Agreement" set to expire May 31, 2018. SR refused and filed this Application for Dispute Resolution on May 29, 2018. SR attempted to pay MM for the month of June 2018 but she declined to accept payment. SR did not pay the seasonal monthly rate of \$620.00 to ROTL for June 2018 or sign an Occupancy Agreement until June 9, 2018.

On June 9, 2018 a tow truck came to the property at the request of ROTL for the purpose of removing the SR's recreational vehicle from the site. The police were also in attendance. ROTL required SR to pay the seasonal monthly rate for May 2018 and June 2018 and sign an Occupancy Agreement for those months, which SR did.

The Occupancy Agreement contains a number of terms, including the following:

3. **AGREEMENT:** OCCUPIER(S) and MANAGER agree that the RV Park Bylaws and Rules, attached, shall be deemed to be incorporated into and form part of this OCCUPANCY AGREEMENT to occupy the site in RV Resort on the Lake. The MANAGER has the right to enter the RV Site at any time without notice and the consent of the OCCUPIER is not required before entry. The MANAGER has the right to control the RV Site and the common property comprising RV Resort on the Lake. The parties agree that the OCCUPIER may be evicted without a reason and the OCCUPIER may vacate without notice. *The Manufactures Home Park Tenancy Act* does not apply to the OCCUPANCY AGREEMENT. The parties acknowledge that the use of RV site and the facilities at RV Resort on the Lake is for recreational purposes/temporary occupancy and is limited by the use covenant.

After signing the Occupancy Agreement on June 9, 2018 ROTL notified SR that they would not be entering another Occupancy Agreement with him and that he would be required to vacate the site by June 30, 2018. SR presented a payment to ROTL for the month of July 2018 but ROTL has declined to take the payment.

SR's position

SR submits that he and MM have a tenancy agreement to which the *Manufactured Home Park Tenancy Act* applies. SR submits that this demonstrated by the fact he has paid rent for the site since November 1, 2015 and pays for his own utilities and insurance, has a key for the mailbox, is responsible to perform yard care on the site, fenced in his site, and resides on the site full time as evidenced by the address for his driver's license and health care. Also, approximately 80 – 90% of sites in the park are occupied year round as full time homes. SR acknowledged that he but does not pay property taxes.

When SR paid the monthly fee for May and June 2018 and signed the license to occupy agreements, he did so under duress, as he communicated to the police officer, and the agreements do not replace his tenancy agreement with MM.

SR submitted that the park is zoned "R-11" which SR described as being zoning for a "park". When I questioned the accuracy of this statement, SR expanded his statement to say that R-11 is zoning for a "recreational park". SR submitted that the zoning by-law R-11 does not include campground. The zoning by-law was not in the evidence before me.

SR submitted that the covenant registered at the land title office is no longer binding as it names the owner/developer and the rental management company operated by the owner/developer and all of the lots have now been sold off by the owner/developer. The park is owned by the strata and the rental management company is operated by the strata counsel, not the corporations named on the covenant.

SR submitted that there are rules and regulations posted in the window of ROTL's office window with reference to sub-letting and application of the *Manufactured Home Park Tenancy Act*. Also, the *Strata Property Act* requires that landlords comply with the *Manufactured Home Park Tenancy Act* or *Residential Tenancy Act*, as applicable.

SR received a letter from a lawyer enquiring as to whether he was a tenant or sub-tenant which indicates ROTL considers SR to be a tenant. The letter was not in the evidence before me.

MM and ROTL's position

When MM entered into the agreement with SR, MM was a lessee of the site and the covenant was not being enforced against sites still owned by the owner/developer. Once MM acquired ownership of the site she became obligated to comply with the land use covenants and strata by-laws. Now that MM is no longer a lessee of the site, she is subject to enforcement of the covenant and strata by-laws, which includes fines. Since becoming the owner of the site MM has instructed SR to pay ROTL on multiple occasions. Initially, SR indicated he would do so and then he did not. When SR failed to pay the rental management company MM attempted to regain possession of the site by way of her previous Application for Dispute Resolution that was filed in August 2017. When she did not succeed in obtaining an Order of Possession under the *Residential Tenancy Act*, MM tried working with SR to resolve the issue of ownership of the

recreational vehicle and inform him to pay ROTL for the site; however, everything she tried was met with resistance by SR. Finally in May 2018 she turned over management of the site to ROTL and hired a lawyer to resolve the issue over ownership of the recreational vehicle.

The “Promissory Notice” agreement MM had with SR has ended. SR entered into the Occupancy Agreements with ROTL for May 2018 and June 2018. The Occupancy Agreements are licenses to occupy and do not fall under the jurisdiction of the *Manufactured Home Park Tenancy Act*. The last Occupancy Agreement entered into expired on June 30, 2018 and no further Occupancy Agreements have been entered into meaning SR no longer has a lawful right to occupy the site.

The property is zoned R-11 which is for use as a “recreational vehicle park”. All sites in the park that are rented must be in the “rental pool” managed by ROTL pursuant to the covenant. Rental of a site is similar to renting a campsite in that occupants bring their own recreational vehicle and renters are to sign a license to occupy agreement which has an expiry date. Rates are subject to change, based on the season, with the summer months the most expensive. Rates are also subject to GST. A license to occupy may be for on a daily or weekly basis or up to one month maximum. Upon expiry of an Occupancy Agreement a new agreement must be entered into to continue to occupy the site.

ROTL described the park as being comprised of individually owned strata lots with subject to the covenant and by-laws registered on title of each lots and owners are prohibited from renting their sites except through the rental management company. Of the 149 lots in the park, most are owner occupied with approximately 35 – 40 sites being rented through the rental pool, except for this site, and no other lot falls under the *Manufactured Home Park Tenancy Act*.

The covenant registered on title of the sites is valid and binding since the covenant is still registered on the title of each lot and the covenant is not invalidated by the change of name of the owner or the rental management company.

The information posted in the window of the office as described by SR was posted by the owner/developer. Now that the rental management company is operated by the strata counsel new operating practices will be the subject of the next Annual General Meeting.

The lawyer’s letter referred to by SR did not recognize SR as a tenant and ROTL suggested that SR re-read the letter.

ROTL provided a copy of Residential Tenancy Policy Guideline 9 and highlighted portions that point to portions that are consistent with finding the Occupancy Agreement is a license to occupy.

Analysis

The *Manufactured Home Park Tenancy Act* (the Act) applies to tenancy agreements between a landlord and a tenant concerning possession of a manufactured home site in a manufactured home park but does not apply to licenses to occupy. Where parties are in dispute as to whether the Act applies, the applicant bears the burden to prove, based on the balance of probabilities that the Act applies.

In this case, SR submits that he has a tenancy agreement for the subject site, entered into by MM in 2015, and that the Act applies to his agreement and the site he occupies. MM and ROTL oppose SR's position and take the position SR does not have a tenancy agreement, no longer has a valid license to occupy, and no longer has the lawful right to occupy the site.

Much of the submissions presented to me concerned the agreement(s) between the parties as being a tenancy agreement or license to occupy. Information and policy statements concerning licenses to occupy are found in Residential Tenancy Branch Policy Guideline 9: *Tenancy Agreements and Licenses to Occupy*. Included in the policy guideline are factors to consider in making a determination that a license to occupy exists. Factors that point to a license to occupy include:

- The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.
- The owner, or other person allowing occupancy, retains the right to enter the site without notice.
- 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.

SR signed two documents with ROTL on or about June 9, 2018, entitled Occupancy Agreements. Upon review of the Occupancy Agreements I find that they are consistent with a license to occupy in that they expressly state the manager of has the right to enter the site and has control of the site, the manager may evict the occupier without cause or notice, and the Act does not apply. The tenant argues that the licenses to occupy he signed were signed under duress as a tow truck was standing by preparing to tow the tenant's recreational vehicle off the property. For purposes of this decision, I find it unnecessary to determine whether SR signed the licenses to occupy under duress since the licenses he signed have since expired and SR maintained that his right to use and occupy the site was obtained pursuant to a tenancy agreement he entered into with MM. Accordingly, I proceed to consider whether SR has a tenancy agreement in place.

SR largely relied upon the agreement he and MM signed in 2015 (entitled "Promissory Note") to demonstrate that he has a tenancy agreement. SR even characterized the "Promissory Note" as being "my rental agreement" in submitting the document as evidence for this proceeding.

The respondents opposed SR's position that the Promissory Note supports the finding of a tenancy and that even if there was a tenancy under that agreement, the agreement ended.

The Promissory Note was executed in September and October 2015 and it is important to note that at that time MM was a lessee of the site, not an owner. A lessee may assign their lease agreement or sub-let the property in certain circumstances, which usually involves obtaining written authorization from the owner. I was not provided a copy of the lease agreement between the owner/developer and MM (or MM's mother) and I am unaware as to whether MM had authorization to assign the lease agreement or sub-let the property. In any event, I find the actions of SR and MM are inconsistent with an assignment. An assignment is a permanent agreement whereby a tenancy or lease relationship is created between the owner of the property and the new tenant. There was no suggestion that SR and the owner/developer entered into an agreement with each other. With a sub-lease, the lessee continues to pay the lease to the owner and the lessee collects payment from the sub-lessee in exchange for giving the sub-lessee the right to use and occupy the property for the period of the sub-let. Since MM was a lessee of the site at the time the Promissory Note was created, SR would be a sub-lessee at best if I accept SR's position that he and MM formed a tenancy in 2015. The agreement entered into by MM and SR had an expiry date of September 1, 2017; however, when a lease ends for the lessee, the sub-let ends too. In this case, MM's lease of the property ended in July 2017 when she paid the owner/developer a lump sum of money to acquire the ownership of the site.

Assuming SR had a sub-let agreement for the site, I find that the sub-let ended in July 2017 since MM was no longer a lessee of the site. Accordingly, in order for me to find SR continues to have the right to occupy the site, I must be satisfied that a tenancy between SR and MM formed after the sub-let ended. MM and SR did not execute another document after MM became the owner of the site to demonstrate formation of a tenancy agreement; however, the definition of tenancy agreement under the Act includes oral and implied agreements. In the absence of a written agreement, I am left with interpreting the actions of the parties to determine if a tenancy formed after the sub-let ended.

It was undisputed that in July 2017 MM instructed SR that he was required to pay rent to the rental management company which is consistent with the requirements of the covenant MM became obligated to comply with. MM's instruction to SR is evidenced by SR filing his previous Application for Dispute Resolution in July 2017. MM also sought to have SR removed from the property by way of her previous Application for Dispute Resolution filed in August 2017. At the hearing in October 2016 MM maintained that the parties did not have a tenancy under either the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act*. Since MM took the position that neither Act applied, he could not obtain an Order of Possession from the Residential Tenancy Branch. Although MM did not obtain an Order of Possession, I find her position consistent with the submissions made again at this hearing, which is that the parties did not form a tenancy agreement and that she tried to have SR pay ROTL or have him evicted once her lease agreement was over.

After the decision was issued for the previous Applications for Dispute Resolution SR continued to make monthly payments to MM and MM accepted those payments for a number of months; however, SR continued to hold possession of the recreational vehicle and the site. Having heard from MM, I found that she appears to be rather unfamiliar with formation and enforcement of contracts and I accept her explanation that for some time she was trying to work with SR in resolving the dispute concerning the purchase of the recreational trailer and paying rent to ROTL since SR remained in possession of both. I am of the view that MM's attempts to resolve the dispute amicably and that passage of a number of months accepting payment from SR for his continued possession of the recreational vehicle and site is not sufficient to evidence formation a tenancy. Rather, I find the parties did not have a meeting of the minds as to formation of a tenancy after the sub-lease ended.

Considering the above, I am of the view that SR has remained in possession of the site despite the end of the sub-let and there is insufficient evidence to satisfy me that a tenancy formed after the sub-let ended. Accordingly, I find SR is occupying the site without the benefit of a tenancy agreement and the protections afforded to tenants under the Act do not apply to SR. Therefore, I decline to accept that the *Manufactured Home Park Tenancy Act* applies and I refuse to accept jurisdiction to resolve the dispute between the parties.

Conclusion

I have declined to find the *Manufactured Home Park Tenancy Act* applies and I refuse to accept jurisdiction to resolve the dispute between the parties.

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: August 24, 2018

Residential Tenancy Branch