Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- an Order directing the landlord to comply with the *Act* pursuant to section 55; and
- a return of the filing fee pursuant to section 65 of the *Act*.

Both parties attended the hearing. The respondent was assisted at the hearing by her counsel, R.D. All parties present were given a full opportunity to be heard, to present testimony, to question the other party and to make submissions.

Both parties confirmed receipt of each other's evidentiary packages, while the landlord confirmed receipt of the tenant's application for dispute resolution. I find all parties were duly served in accordance with the *Act.*

Issue(s) to be Decided

Should the respondent be directed to comply with the *Act*?

Is the applicant entitled to a return of the filing fee?

Background and Evidence

Testimony provided by both parties confirmed the applicant began occupying the premise on July 1, 2007 with a fee of $385.00 being paid monthly. The parties explained the respondent served the applicant with a letter dated July 1, 2017 informing the applicant that she had 15 months to vacate the property. A second notice was given to the on February 15, 2018 explaining the applicant had 7 months to comply and vacate the property.

The applicant is seeking an Order pursuant to section 55 of the *Act,* directing the respondent to comply with section 42 of the *Act* by providing her proper notice to end the tenancy.

Counsel for the respondent argued the *Act* should not apply because the applicant occupies a recreational vehicle ("R.V.") and is therefore not afforded the protection of the *Act*. Counsel explained the applicant was subject to a license to occupy which could be revoked at any time. The respondent said the applicant paid rent based on a daily rate and was charged GST above the rent equivalent to $385.00 paid each month. As part of her evidentiary package, the respondent submitted several receipts which recorded the various rents paid throughout the period of occupation due to the Harmonized Sales Tax ("HST"). The respondent said it was her understanding that the applicant did not have to provide any notice to vacate the property and "could leave at any time" although they had orally agreed on a thirty days' notice clause. The applicant disputed the existence of such clause. Additionally, the respondent and her counsel explained the property was zoned as a camping and tourist resort with the applicant occupying a pad designated for R.V.s, not for manufactured homes. The respondent submitted a copy of the business license under which she operated, along with copies of the municipal by-laws which highlighted the distinctions between manufactured home parks and camping/tourist accommodation. The respondent and her counsel then detailed the differences between a R.V. and a manufactured home; specifically, they highlighted different tax assessments for recreational vehicles and different insurance schemes, safety and manufacturing standards, zoning. They also noted the respondent's right to enter the property surrounding the R.V. without notice.

In her evidentiary package, the respondent included an affidavit explaining the property in question is comprised of 46 sites, 34 of which are zoned for R.V.s, 7 for manufactured homes and 5 for tents. The respondent explained the unit occupied by the applicant is not one of the 7 manufactured home sites and is in fact designed to accommodate R.V.s with rent of $380.00 including water, sewer, garbage and recycling pickup.

The applicant disputed the respondent's argument that the *Act* should not apply and explained the R.V. in question had occupied the property for over twenty years. The applicant said she first occupied the R.V. in 2007 and was informed at the time of purchase that the unit was built in 1994 and had been placed on blocks and skirted on the property shortly after it. The applicant argued the R.V. should be considered a manufactured home because it could not easily be moved, was her sole place to live, had a washer/dryer hooked up to the pad before her arrival and had never been

licensed or insured to travel on the road. The applicant said the unit was immovable and had a 300 to 350 square foot closed garage with glass partitions attached to its side.

Analysis

The applicant sought an Order directing the respondent to comply with the *Act* and to provide her with a proper notice to end tenancy. The respondent and her counsel argued they did not have to provide such notice because the *Act* did not apply.

Residential Tenancy Policy Guideline #9 examines the issue of tenancy agreements versus licenses to occupy and provides some direction on the factors which may be considered when examining issues around tenancy.

It says:

> 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 Act*. A licensee is not entitled to file an application under the *Manufactured Home Park Tenancy Act*.
>
> 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 consideration 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:
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> - The manufactured home is intended for recreation 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

The BC Supreme Court held at paragraph 41 in *Thompson-Nicola Regional District v. 0751548 B.C. Ltd., 2014 BCSC 1867 (CanLii)* that:

> It is not plausible that the Regional District intended a vehicle, otherwise fitting the definition of recreational vehicle, to cease being a "recreational vehicle" as soon as it is no longer used by the owner or occupier for temporary accommodation. A recreational vehicle does not cease being a recreational vehicle because it remains in one location for an extended period of time. Its status, in my view, is not dependent on whether an owner or occupier of the vehicle decides to keep it in one spot or move it to another spot, or decides to store it for later use.

In *Thompson-Nicola Regional District*, the defendant attempted to argue that a recreational vehicle and a manufactured home which remained on site were "essentially the same." This argument was rejected by the court which noted at paragraph 42, "The definition of "manufactured home" expressly excludes 'recreational vehicles.' Even in the absence of that express exclusion, such vehicles to not fit comfortably within the definition of "manufactured home."

The applicant in this hearing contended her unit should be seen as a manufactured home and not a recreational vehicle because; it is the only home she occupies, has not been driven on the road or licensed to be on the road, was purchased with skirting and on blocks, and it contains an enclosed garage that is permanently attached to its side. Elements of this argument were considered and rejected by the Court in *Thompson-Nicola Regional District*. The Court noted at paragraph 50 that:

> The defendant's contention that owner occupied recreational vehicles that remain on site are excluded from the definition of "recreational vehicle", if this were accepted, would potentially have impractical or unworkable consequences. How long would an owner occupier have to keep the recreational vehicle on site in order to be entitled to remain in a MH-1 Zone? What would be the status of individuals who leased recreational vehicles from their owner but kept them on one site for the spring-summer reason? When would the recreational vehicle become a "residence" – which is a stipulation in the definition of "dwelling unit."

Based on the services included with the tenant's rent, the payment of GST and HST above her base rent payment, a review of the property's zoning and municipal by-laws, and the principles laid down by the court in *Thompson-Nicola* that a recreational vehicle, not matter its configuration or length of stay, was not a manufactured home, I find the tenant has failed to show that the landlord had an obligation to end her tenancy via a notice to end tenancy. I find the *Manufactured Home Park Tenancy Act* does not apply to the living arrangement in question and the landlord had no obligation to serve the tenant with a notice to end tenancy.

Conclusion

The *Manufactured Home Park Tenancy Act* does not apply to the tenant's application. I am without power to direct the landlord to comply with the *Act*.

The tenant must bear the cost of her own filing fee.

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: October 25, 2018

Residential Tenancy Branch