Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC FF

Introduction

This hearing dealt with the tenants' 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 respondent confirmed receipt of the 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*?

Are the applicants entitled to a return of the filing fee?

Background and Evidence

Testimony provided by both parties confirmed the applicant began occupying the property on November 1, 2014 with rent of $415.00 being paid monthly. The parties explained the respondent served the applicants with a letter dated July 1, 2017 informing the applicants they had 15 months to vacate the property. A second notice was given on February 15, 2018 explaining the applicants had 7 months to vacate the property.

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

As part of their evidentiary package the applicants submitted a letter which stated, "On July 1, 2017 tenants received a formal notice to vacate which indicated: *This letter is being served as*

your 15 month Notice to Vacate R.V. Site #12 on or before October 1, 2018. On February 15, 2018 another letter was sent to remind tenants they were to vacate their sites on or before October 1, 2018 as the Park would be closing on that date."

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, in fact, a licensee and subject to a license to occupy which could be revoked at any time. The respondent said the applicant paid for occupancy based on a daily rate equivalent to $415.00 each month and were charged G.S.T. above this amount. As part of her evidentiary package, the respondent submitted several rental receipts which displayed the different rents paid throughout the tenancy due to the former 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". The applicant disputed this. 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 the different tax assessments, insurance schemes, safety and manufacturing standards, zoning restrictions, and the fact the respondent enjoyed a right to enter the property next to the R.V. without notice.

Specifically, the respondent and her counsel said the respondent was responsible for the upkeep on site, grass cutting and garbage removal. In addition, they explained the respondent paid property taxes, a business license and charged extra for electricity and phone, while cable, water and sewer were included in the monthly fee. The respondent and her counsel said manufactured homes in the site were assessed by the BC Assessment Authority, and included copies of the municipal by-laws along with a copy of the zoning by-laws which distinguished manufactured homes from tourist accommodations.

In her evidentiary package, the respondent included an affidavit explaining the property in question is comprised of 46 sites, 34 of which are reserved for R.V.s, 7 for manufactured homes and 5 for tents. The respondent explained the unit occupied by the applicants was not one of the 7 manufactured home sites and is in fact designed to accommodate R.V.s.

The applicants disputed the respondents' argument that the *Act* should not apply and explained the R.V. in question had been on the property since 1997. The respondents wrote, "I [we are] disputing the validity of the premature notice to vacate my [our] pad site at the P motor and trailer park dated July 1, 2017 because to my knowledge, the zoning and permits have not been approved as required under section 42 of the Manufactured Home Owners Act." The applicant continued arguing their evidentiary package, "To my knowledge NO REZONING OR DEVELOPMENT PERMITS HAVE BEEN APPROVED TO DATE for this property at our

location: 12345 X Avenue in S. The planning office in S. has advised that the rezoning and permits process in the very early stages to allow, at a future time the development and construction of 46 townhouses for this address."

They described the R.V. as their "sole and primary" residence. The applicants said the R.V. was a 36 foot "park model" trailer with two "pop-outs." They said it had no holding tank, was skirted and had that they no vehicle by which it could be towed. The applicants described themselves as "full-time" residents of the park, saying "rent" was paid on the first of each month, not on a daily basis, and explained they did not drive the R.V. in typical "traveller" mode. They remained on the property year round. In addition, the applicants submitted copies of their ICBC statement, along with a credit card and a mobile phone bill showing the R.V. site as their mailing address and address for service.

Analysis

The applicants 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*.
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> 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 had 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 applicants in this hearing contended their unit should be seen as a manufactured home and not a recreational vehicle because; it is the only home they occupy, it has not been driven on the road or is licensed to be on the road, and it was purchased with skirting and on blocks. 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 occupier recreational vehicles that remain on site are excluded from the definition of "recreational vehicle", it is 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 applicants monthly payment, the payments of GST and HST above this base payment, the property's zoning, the municipal by-laws, and the principle outlined by the court in *Thompson-Nicola* that a recreational vehicle, despite its configuration or length of stay, is not a manufactured home. I find the *Manufactured Home Park Tenancy Act* does not apply to the living arrangement in question because it is a license, not a tenancy, and the landlord had no obligation to serve the applicants with a notice to end tenancy as required by the *Act*.

Conclusion

The *Manufactured Home Park Tenancy Act* does not apply. I am without power to direct the respondent to comply with the *Act*.

The applicant must bear the cost of their 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 26, 2018

Residential Tenancy Branch