Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Property Motor and Trailer Court Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

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

- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 55; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 65.

The respondent, the respondent's agent and the applicant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The applicant testified that the respondent was personally served with the notice of dispute resolution package around October 3, 2018 but was not positive on the date. The respondent's agent testified that the respondent received the notice of dispute resolution package on October 6, 2018. As the respondent confirmed personal receipt of the dispute resolution application, I find that the respondent was served with this package in accordance with section 89 of the *Act.*

At the beginning of the hearing the respondent testified that the shortened version of her first name was listed on the application for dispute resolution. Pursuant to section 64 of the *Act*, I amend the application for dispute resolution to list the respondent's full first name.

Issue(s) to be Decided

1. Does the agreement between the parties fall within the jurisdiction of the *Act*? If so, is the applicant entitled to an Order directing the respondent to comply with the *Act*, regulation or tenancy agreement, pursuant to section 55 of the *Act*?
2. Is the applicant entitled to recover the filing fee for this application from the respondent, pursuant to section 65 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the applicant's and respondent's claims and my findings are set out below.

Both parties agreed to the following facts. The applicant drove his motor home onto the respondent's property (the "Property"), in July of 2015. The applicant's motor home is a self-propelled vehicle which does not detach from the living area of the motor home. The applicant and respondent did not sign a tenancy agreement. Shortly after arriving at Property, the applicant put his motor home on blocks and has not taken the motor home off blocks since arriving. A photograph of the applicant's motor home was entered into evidence.

Both parties agreed to the following facts. In July of 2017 the respondent provided the applicant with a 15 month notice to end tenancy dated July 1, 2017, effective October 1, 2018 (the "15-Month Notice"). The 15-Month Notice was not on a Residential Tenancy Branch form. The 15-Month Notice was entered into evidence. The 15-Month Notice stated: "This letter is being served as your 15 month notice to vacate R.V. Site #50 on or before October 1, 2018."

Both parties agreed to the following facts. In February of 2018 the respondent provided the applicant with a six month notice to end tenancy dated February 15, 2018 with an effective date of October 1, 2018 (the "Six-Month Notice"). The Six-Month Notice to end tenancy was not on a Residential Tenancy Branch form. The Six-Month Notice was entered into evidence.

The Six-Month Notice stated: "At this time, is it about half-way through the 15-month formal notice dated July 1, 2017 which was provided to you stating that the Property will be closing on October 1, 2018. Also, tenants were required to vacate their respective R.V. site on or before October 1, 2018. This is a formal notice, second in sequence, and acts as a reminder that the Property will be closing October 1, 2018. Tenants are still required to vacate their respective R.V. site on or before October 1, 2018."

Both parties agreed to the following facts. On October 1, 2018 the respondent provided the applicant with a 24-Hour notice to end tenancy dated October 1, 2018 (the "24-Hour Notice"). The 24-Hour Notice to end tenancy was not on a Residential Tenancy Branch form. The 24-Hour Notice was entered into evidence. The 24-Hour Notice stated: "You are hereby notified to vacate RV Site #50 at the address listed above within 24 hours from the date of the delivery of this notice to you. If you do not comply, further action will be taken."

The applicant testified that the respondent did not serve him with the appropriate Residential Tenancy Branch ("RTB") forms to end his tenancy and so he is not required to vacate the subject property. The applicant testified that he is a tenant and that the respondent is his

landlord and that the *Act* applies to this dispute. The applicant is seeking an Order that the *Act* applies to this case and that if the respondent is going to evict him, the respondent must serve him with the appropriate notice to end tenancy as prescribed by the RTB.

The respondent's agent testified that the *Act* does not apply to this case because the applicant has a license to occupy, not a tenancy; therefore, the respondent is not required to use RTB forms to evict the applicant and the respondent is permitted to evict the applicant without notice.

The applicant testified that the subject property is his full-time residence and that he does not have another address. The applicant entered into evidence a copy of his driver's license which lists the address of the subject property but does not list the site/pad number. The applicant also entered into evidence a copy of correspondence from the Government of Canada which is addressed to the applicant at the subject rental property but does not list the site/pad number. Both parties agree that the applicant's mail is delivered to the respondent at the Property and that the respondent then delivers the mail to the applicant.

The applicant testified that his motor home is intended for residential use and that he has only started the engine in it on two occasions since he moved it onto the subject property.
The respondent's agent testified that the applicant's motor home is intended for recreational use. The respondent's agent testified that the applicant's motor home is not a manufactured home as described in section 1 of the *Act*. The respondent's agent testified that the *Act* does not define a motor home, but the *Motor Vehicle Act* does; section 1 of the *Motor Vehicle Act* was entered into evidence. Section 1 of the *Motor Vehicle Act* states that a motor home means a motor vehicle designed or used primarily for accommodation during travel or recreation, but does not include a motor vehicle that has attached to it a structure:

- designed or used primarily for accommodation during travel or recreation, and
- designed or intended to be detachable.

The respondent's agent entered into evidence a Technical Safety BC directive on recreational vehicles which states that a recreational vehicle is interpreted as meaning any recreational unit that is built on a single chassis mounted on wheels and is intended to provide temporary living quarters for recreations, camping, travel, or seasonal use and had its own motive power or is mounted on or towed by another vehicle.

The respondent's agent submitted the following. Recreational vehicles are intended to be used as temporary living accommodation, not permanent living 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 is not dependent on whether an owner or occupier of the recreational vehicle decides to keep it in one spot or move it to another spot. In support of this contention, the respondent's agent cited *Thompson-Nicola (Regional District) v. 0751548 B.C. Ltd.,* [2014] B.C.J. No. 2471.

Both parties agree that a security deposit was not paid by the applicant to the respondent.

Both parties agree that they do not have a personal or familial relationship.

The respondent's agent testified that the respondent retains the right to enter the site the applicant is occupying, and that the respondent has entered the applicant's site since his arrival for maintenance and security reasons without notice to the applicant or permission from the applicant. The applicant testified that the site his motor home is on is an open site and that the respondent has access to it, but the respondent is not allowed in his motor home. Both parties agree that the respondent has never provided the applicant with notice to enter his site.

Both parties agree on the following facts. The respondent pays the property taxes for the subject property. The applicant's electrical consumption is metered, and he pays the respondent for his consumption. The respondent pays the electricity bill for the entire Property to the utility company. The respondent provided the applicant with cable until October 1, 2018.

The respondent's agent testified that the applicant's rent is paid monthly and calculated on a daily rate of approximately $14.00 per day plus GST and plus electricity. The respondent testified that if the applicant were to leave before the end of the month and he had paid for the entire month up front, the applicant would be reimbursed for the days he did not stay at the subject property. The respondent testified that this is the policy for all R.V. sites at the Property and that the applicant is on an R.V. site.

The respondent entered into evidence receipts which state "RV site for one month- $420.00". The receipts also show the breakdown of the applicant's electricity consumption and charges as well as the calculation of GST. The receipts showed that months with more days in them did not have a higher rent than months with fewer days.

The applicant testified that he pays $420.00 per month plus GST and electricity. The applicant testified that he has never heard of a daily rate until this proceeding started.

The respondent's agent testified that the business license issued to the respondent covers 46 sites which are comprised of 34 recreational vehicle sites, seven manufactured home sites and five tent sites. The respondent's agent testified that the applicant's motor home is on one of the 34 recreational vehicle sites, not a manufactured home site. The business license was entered into evidence and states that the business category is "Mobile Home Park for Mobile Home and Tourist Spaces".

The respondent's agent testified that the Property is zoned CTA which is tourist accommodation, not RM-M which is the zoning for a manufactured home park. The respondent entered into evidence a copy of the city in question's online zoning map which shows that the subject property is zoned CTA.

The respondent entered into evidence an excerpt from the city in question's zoning by-laws which states that the intent of zone CTA is "to accommodate and regulate the development of *tourist accommodation, tourist trailer parks* and *campsites"*. The by-law goes on to state that land and structures shall be used for the following uses only, or for a combination of such uses:

1. tourist accommodation;
2. tourist trailer park or camp-site provided that the minimum area for each trailer or camping space shall be 85 square meters and a minimum width of 6 meters; and
3. accessory uses including: eating establishments, retail stores, personal services uses and one single family dwelling for the manager of the tourist trailer park or camp-site.

The respondent also entered into evidence an excerpt from the city in question's zoning by-laws which states that the intent of zone RM-M is "for the provision of *manufactured home parks*". The by-law goes on to state that land and structures shall be used for the following uses only, or for a combination of such uses provided such combined uses are part of a *comprehensive design*:

1. manufactured home park, provided that the minimum area for each manufactured home space shall be 225 square meters with a minimum width of 12 meters; and
2. one single family dwelling for the manager of the manufactured home park.

The respondent's agent testified that the applicant's site is 22-24 feet in width (6.7 -7.3 meters) and therefore is not wide enough to qualify as a manufactured home site.

The applicant testified that he did not have any knowledge about the zoning of the Property but that his motor home is 32 feet in length and that his site can accommodate a length of 45 feet.

Both parties agree that the respondent is responsible for providing frost fee water to the site and that the applicant is responsible for the water connection from the site to his motor home. The common shower, washroom and laundry facilities are maintained by the respondent and are accessible to the applicant.

The respondent's agent testified that the respondent does not impose visiting hours. The applicant testified that he once saw a poster which stated that there was to be no noise or visitors after 8:30 p.m. The respondent's agent testified that the respondent never put up a notice or poster to that effect.

Analysis

The applicant sought an Order directing the respondent to comply with the *Act* and to provide him with a proper notice to end tenancy. The respondent's agent and the respondent argued that the applicant has a license to occupy and is not a tenant; therefore, the *Act* does not apply.

Residential Tenancy Policy Guideline #9 ("Policy Guideline #9") clarifies the factors that distinguish a tenancy agreement from a license to occupy. It states:

> 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 Act. A licensee is not entitled to file an application under the Manufactured Home Park Tenancy Act.

Based on the testimony of both parties I find that the tenant does not have exclusive possession of the subject site.

Section 2(1) of the *Act*, states that despite any other enactment but subject to section 4 *[what this Act does not apply to]*, this Act applies to tenancy agreements, manufactured home sites and manufactured home parks.

Under section 1 of the *Act*:

> “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;
>
> “manufactured home park” means the parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located;
>
> “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;
>
> “tenancy” means a tenant’s right to possession of a manufactured home site under a tenancy agreement;

> "tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities;

I find that the applicant's motor home was not designed, contracted or manufactured to be moved from one place to another by being towed or carried as set out in section 1 of the *Act*. The applicant's motor home was designed to be driven from one place to another. I find that the applicant's motor home is not a manufactured home as defined in section 1 of the *Act*.

The *Act* does not define recreational vehicles or motor homes. Section 1 of the *Motor Vehicle Act, RSBC* 1996, c.318 ("*Motor Vehicle Act"*) defines a motor home as follows:

> **"motor home"** means a motor vehicle designed or used primarily for accommodation during travel or recreation, but does not include a motor vehicle that has attached to it a structure
>
> (a)designed or used primarily for accommodation during travel or recreation, and
>
> (b)designed or intended to be detachable;

The BC Supreme Court held at paragraph 41 in *Thompson-Nicola Regional District v. 0751548 B.C. Ltd., 2014 BCSC 1867 (CanLii)* ("*Thompson-Nicola Regional District"*) 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 do not fit comfortably within the definition of "manufactured home."

In accordance with section 1 of the *Motor Vehicle Act* and *Thompson-Nicola Regional District*, I find that the applicant's motor home is a recreational vehicle. The fact that the applicant put his motor home on blocks and has not driven it since he moved to the subject property, does not alter its status as a recreational vehicle, nor does the fact that he lives in the motor home full time.

Policy Guideline #9 specifically speaks to living arrangements between parties that involve 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.

Based on the testimony and evidence of the respondent, including the zoning map, I find that the applicant's motor home is located in an RV Park, not a manufactured home park. I find that the subject property does not meet the zoning requirement for a Manufactured Home Park.

Based on the testimony and evidence of both parties, I find that rent is calculated on a monthly basis, as rent is not higher on months that have more days than months with less. I find that GST is calculated on the rent.

Based on the testimony and evidence of both parties, I find that the applicant pays his portion of utilities to the respondent and that the respondent pays the utility company. I find that the respondent paid for cable up until October 1, 2018.

Based on the testimony and evidence of both parties, I find that the respondent does not provide a frost fee water connection into the applicant's motor home.

Based on the testimony and evidence of both parties, I find that visiting hours were not imposed as the applicant was unable to substantiate his claim that the respondent had posted visitation limitations.

Upon review of the documentary evidence, testimony of the parties, applicable definitions, legislation, caselaw and guidelines, I find that while there are factors pointing to both a tenancy

arrangement and a license to occupy, the preponderance of factors indicate that the agreement between the parties is a license to occupy. I therefore find that the *Act* does not apply to the agreement between the parties and accordingly, I decline jurisdiction over this matter.

Conclusion

I dismiss the applicant's application without leave to reapply due to lack of 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: November 28, 2018

Residential Tenancy Branch