



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNLC

Introduction

This hearing dealt with an application pursuant to the *Manufactured Home Park Act* (the “Act”) for:

- cancellation of a 12 Month Notice to End Tenancy for Conversion of Manufactured Home Park (the “12 Month Notice”) pursuant to section 42.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party’s evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Does the agreement between the parties fall within the jurisdiction of the *Act*? If so, should the 12 Month Notice be cancelled?

Background

While I have turned my mind to all the documentary evidence, including, photographs, licensing and zoning documents, bylaws, maps and miscellaneous letters, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here.

Based on the testimony of the parties, I find the following relevant facts. Prior to the applicant’s occupancy, the respondent entered into a contract of purchase and sale of

the park. The applicant began occupying a motor home on a gravel site located in the park, in June of 2016. The applicant paid a pro-rated rent for June 2016 and began paying a monthly rent in the amount of \$425.00 the following month. The applicant pays GST on monthly rent and the respondent issues receipts. Rent includes cable, water/sewer and garbage/recycling services. In addition to rent, the applicant pays for his consumption of electricity each month.

Frost free water is supplied to the site by the respondent. The connection from the site to the motor home is left to the applicant to complete and maintain. The respondent maintains the park grounds including the site the applicant occupies. The common shower, washroom and laundry facilities are maintained by the respondent and are accessible to the applicant. Visiting hours are not imposed.

The purchaser plans to redevelop the property after the completion of the sale. On July 1, 2017 the respondent served the applicant with a letter to vacate the site on or before October 1, 2018.

Argument and Evidence of Applicant

It is the applicant's position that the park is licensed as a mobile home park. He testified that previous zoning for the park allowed for the use of motels, mobile home parks, tourist trailer parks and campsites. He stated that in 1993 the city replaced this zoning and as a result, the parks legal non-confirming use of a motel and mobile home park were grandfathered. In an effort to support his position, the applicant has submitted various copies of city bylaws, reports and zoning documents.

The applicant submitted that he has a tenancy under the *Act*, and that the terms were outlined by the respondent in a declaration used for housing assistance. He stated that the declaration, which he included as part of his documentary evidence, establishes that he is a tenant with a periodic tenancy that pays utilities. The applicant testified that he lives at the park full time as it is his only residence. To support this claim, the tenant submitted a copy of his licence and automobile insurance. He stated that the motor home he resides in has not been licensed for many years or used as a recreational vehicle in the capacity of a travel home since being established on the site. He testified that he occupies a fully serviced site with water, electricity, sewer and cable for which he pays rent calculated on a monthly basis; not daily.

The applicant contends that because a tenancy has been established, the respondent's letter to vacate dated July 1, 2017 is in contravention of section 45 (d) and (e) of the *Act*.

Argument and Evidence of Respondent

It is the respondent's position that the business licence establishes the land as a combination park as it includes both mobile home and tourist spaces. She has included a copy of the licence as part of her documentary evidence. The respondent testified that the park has a total of 46 sites made up of 34 recreational vehicle sites, 7 manufactured home sites and 5 tent sites.

The respondent testified that the property meets the zoning requirements for tourist accommodation, tourist trailer park and camp site, not for a manufactured home park. The respondent contends that if it were zoned for a manufactured home park, recreational vehicle and tent sites would not be permitted. As part of her documentary evidence, the respondent has submitted a copy of a map obtained from the city, which shows the zoning of the park. She has also included a copy of the applicable zoning for a manufactured home park.

The respondent testified that the applicant occupies a motor home on one of the 34 recreational vehicle sites; not a manufactured home on a designated manufactured home site. The respondent has included an excerpt from the Motor Vehicle Act which defines a motor home and a photograph of the decal located on the applicant's unit. In addition to this, the respondent has referred to and provided other legislation which defines a recreational vehicle.

As an occupant in a recreational vehicle on a recreational vehicle site, the respondent stated, the applicant reserves the right to vacate without notice, does not pay annual taxes on his site, has access to common showers and pays GST on his rent which is calculated using a daily rate. In contrast, those individuals on a manufactured home site in a manufactured home must give 30 days' notice to vacate, pay annual taxes on their site, are restricted access to the common showers and are not required to pay GST on rent.

Analysis

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;

Policy Guideline #9, used to distinguish a tenancy agreement from a license to occupy states:

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.

Policy Guideline #9 refers to those arrangements between parties that involve travel trailers and 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.

Upon review of the documentary evidence, testimony of the parties and applicable definitions and guideline, I find that the applicant has failed to establish that a tenancy agreement exists. No one factor has convinced me of this; rather it is the cumulative persuasion of the following.

The applicant occupies a unit equipped with wheels and a motor on a designated recreational vehicle site in a park that is licensed and zoned to include tourist accommodation. The applicant pays GST on his rent and does not pay annual taxes on his site. Fundamental elements of a tenancy agreement are absent, as evidenced by the respondent's right to access the site without notice and the applicant's right to vacate without notice.

In summary, I find that the applicant has failed to establish that a tenancy agreement exists. Accordingly, I find that the *Act* does not apply to the agreement between the parties and therefore decline jurisdiction over this matter.

Conclusion

I dismiss the application as I have no jurisdiction to render a decision in this matter.

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 16, 2018

Residential Tenancy Branch