



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OLC FFT

Introduction

This is an application by the Applicant under the *Manufactured Home Park Tenancy Act* (the “*MHPTA*” or “*Act*”) for the following:

- An order requiring the landlord to comply with the *Act*, regulation and/or the tenancy agreement pursuant to section 55; and
- Reimbursement of the cost of the filing fee from the Respondent pursuant to section 65.

The Applicant attended. The Respondent’s agent KA and lawyer RD attended (“the Respondent”). Both parties were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party and make submissions. The Respondent acknowledged receipt of the Applicant’s Notice of Hearing and Application for Dispute Resolution. The Applicant acknowledged receipt of the Respondent’s evidentiary materials. No issues of service were raised. I find the parties were duly served in accordance with the *Act*.

Issue(s) to be Decided

Does the agreement between the parties fall within the jurisdiction of the *Act*? If so, should the 15 Month Notice given to the Applicant by the Respondent be cancelled?

Is the Applicant entitled to an order requiring the landlord to comply with the *Act*, regulation and/or the tenancy agreement pursuant to section 55 of the *Act* and to reimbursement of the cost of the filing fee from the respondent?

Background and Evidence

Each party submitted an evidence package and substantial testimony. I have considered all documentary evidence including photographs, licensing and zoning documents, bylaws, maps, correspondence and cases. However, I will only refer to key relevant evidence in my Decision.

The Respondent operates a park which includes sites for recreational vehicles, manufactured homes and tents. The Applicant owns and occupies a fifth wheel trailer ("the unit") located on a site in the Respondent's park. The Respondent plans to sell the property for redevelopment. The Respondent wants the Applicant and other occupants to vacate the property. Consequently, the Respondent took the following steps:

- By letter dated April 1, 2016 addressed to "Tenants", the Respondent stated the park was listed for sale and would be closed;
- By letter dated June 1, 2016 addressed to "Tenants", the Respondent stated that the park had been sold and rezoning was underway;
- By letter dated on July 1, 2017, the Respondent informed the Applicant the letter was "being served as your 15 month notice to vacate" by October 1, 2018;
- By letter dated October 1, 2018, the Respondent notified the Applicant he had 24 hours to vacate;
- The Respondent has accepted rent for the months of October and November 2018;
- On October 12, 2018, the Applicant submitted an Application for dispute resolution.

The Respondent acknowledged the notices were not in standard *MHPTA* forms as the Respondent's position is that the *Act* does not apply.

Applicant's Submissions

The Applicant stated he has a tenancy agreement with the Respondent to which the *MHPTA* applies. He seeks an order compelling the Respondent to comply with the *MHPTA*. In support of his position, the Applicant testified as follows:

- The site on which his unit is located is a grass site in the Respondent's park;
- He began living on the site in January 2008 and continues to do so with no plans to leave;

- In 2012, he replaced the original motor home with the current unit; it has been on the site for six years;
- The unit is a 5th wheel, manufactured in 1997, skirted and on blocks;
- There is no written contract and the Applicant did not pay a security deposit;
- He pays monthly rent plus GST; rent includes services of frost-free water and sewer;
- The Respondent provides the water connection to the unit's site and the Applicant is responsible for the connection;
- He pays metered hydro use to the Respondent;
- The address of the unit is on his main identification, such as his motor vehicle license; his monthly bills, such as for telephone, are billed to the address of the unit;
- The park has mail delivery where the Applicant receives his mail;
- The unit has not been licensed, moved or used as a recreational vehicle since it was moved to the site;
- The unit is a permanent structure which would be difficult or impossible to move;
- There are no visiting hours to the park.

The Respondent acknowledged receipt of the 15-month Notice. He stated he consulted with RTB information officers. He informed the Respondent the *MHPTA* applied and that certain procedures under the *Act* applied. He advised the Respondent he would not vacate the site.

The Respondent submitted a copy of a letter from the City of Surrey dated July 25, 2017 addressed to "area resident" stating that there was an application for the development of 46 townhouse units on the property.

Respondent's Submissions

The Respondent testified the Applicant is not a tenant under the *MHPTA*. The Respondent's position is that the Applicant lives in the unit under a "license to occupy" to which the *MHPTA* does not apply. The Respondent asserts she may revoke the license at any time. In support of her position, the Respondent testified as follows:

- The Applicant occupies a site in the park designated for recreational vehicles and not for manufactured homes;

- Although the Applicant pays the same amount each month and this would appear to be a “monthly rate”, it is in fact a “daily rate”; the Applicant could vacate the site at any time and pay only to the date of vacating;
- The Respondent detailed the differences between a manufactured home and a recreational vehicle; specifically, there are different tax assessments, insurance plans, safety and manufacturing standards, and applicable zoning;
- The Respondent submitted photographs of stickers showing the Applicant’s unit was labelled a recreational vehicle in contrast to others labelled as a manufactured home;
- The Respondent has a right to enter the area around the unit without notice;
- The Applicant does not pay assessed taxes on the unit.

In summary, the Respondent asserted that the Applicant lives in a recreational vehicle, not a manufactured home, and the MHPTA does not apply.

Analysis

The Applicant sought an order directing the Respondent to comply with the MHPTA and provide proper notice to end the tenancy in keeping with the legislation. The Respondent argued she did not have to provide such notice as the MHPTA did not apply to this case; the agreement between the parties was a license to occupy.

Although references were made to other legislation and rules which govern manufactured homes and recreational vehicles, my sole jurisdiction is under the *MHPTA*. Accordingly, my comments are restricted to considering that *Act* only.

A “manufactured home” is defined in section 1 of the *Act* as follows:

“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;

The *Act* defines a “manufactured home park” as:

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;

The Act defines "manufactured home site" as:

a site in 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;

A "periodic tenancy" includes a tenancy which is on a monthly or other periodic basis. A "tenancy" is a tenant's right to possession of a manufactured home site under a tenancy agreement.

Residential Tenancy Guideline # 9 clarifies the factors that distinguish a tenancy agreement from a license to occupy. A license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, the "licensee" is given permission to use a site, but that permission may be revoked at any time.

The Guideline states in part as follows:

If there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created, unless there are circumstances that suggest otherwise. [...]

In order to determine whether a particular arrangement is a license or tenancy, the arbitrator will consider what the parties intended, and all of the circumstances surrounding the occupation of the premises.

Some of the factors that may weigh against finding a tenancy are:

- *Payment of a security deposit is not required.*
- *The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.*
- *The occupier pays property taxes and utilities but not a fixed amount for rent.*
- *The owner, or other person allowing occupancy, retains the right to enter the site without notice.*
- *The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.*
- *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.*

The arbitrator will weigh all of the factors for and against finding that a tenancy exists, even where the written contract specifies a license or tenancy agreement. It is also important to note that the passage of time alone will not change the nature of the agreement from license or tenancy.

Tenancies involving 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.*

The landlord referred to the BC Supreme Court decision in *Thompson-Nicola Regional District v. 0751548 B.C. Ltd.*, 2014 BCSC 1867 (CanLii). In that case, the bylaw specifically defined a “manufactured home” to *exclude* a recreational vehicle. The MHPTA, on the other hand, defines a “manufactured home” in section 1 as follows:

"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;

As well, *Policy Guideline # 9* anticipates that the definition of a manufactured home could include a recreational vehicle. To repeat, the Guideline states as follows:

Although the [MHPTA] 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

As the MHPTA does not specifically exclude a recreational vehicle from the definition of a manufactured home but rather anticipates a recreational vehicle could be classified as a manufactured home, I do not find the *Thompson-Nicola Regional District* case to be determinative of the issues before me.

The Applicant referred to the BC Supreme Court decision in *D. & A. Investments Inc. v. Hawley*, 2008 BCSC 937 which concerned the jurisdiction of the Manufactured Home Tenancy Act, S.B.C 2002, c. 77. In that case, the owner of a park for manufactured home and recreational vehicles raised the rent in an amount greater than allowed under the *Act*. The judge concluded the *Act* applied to the tenancies in the park, including a 5th wheel trailer. The decision upheld the decision of the RTB arbitrator at first instance and stated as follows:

If one looks at the policy behind the Act, to provide protection to both landlords and tenants who are involved in long-term tenancies, it is reasonable that the Act should apply to the respondents. (p 14)

I have considered all the factors and applied them to the circumstances of this case. The current situation is not one in which a mobile, licensed recreational vehicle pays rent from day to day and moves from one location to another, either temporarily or seasonally. The Applicant has lived there for ten years. The Applicant pays monthly rent. The Respondent refers in written notices to “the tenants”. I find the evidence leads to the conclusion that parties intended to create a tenancy and a tenancy exists.

I find the Applicant has met the burden of proving on a balance of probabilities that a periodic tenancy exists to which the MHPTA applies. I find that this tenancy falls within the jurisdiction of the *Manufactured Home Park Tenancy Act* and regulations. The tenancy can only be terminated in accordance with the relevant sections of that *Act*.

I grant the tenant reimbursement of the filing fee of \$100.00 for which he may be compensated by the one-time reduction of monthly rent in that amount.

Conclusion

I find that this tenancy falls within the jurisdiction of the *Manufactured Home Park Tenancy Act* and regulations. The tenancy can only be terminated in accordance with the relevant sections of that *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 12, 2018

Residential Tenancy Branch