



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

This hearing dealt with an application by the tenant under the *Manufactured Home Park Tenancy Act* (the *Act*) for an order for emergency repairs pursuant to section 55.

The landlord attended. The agent BD attended for the tenant ("the tenant") in the presence of an RCMP Officer. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence. No issues of service were raised. I find the tenant served the landlord in accordance with section 89 of the *Act*.

Preliminary Issue – Jurisdiction under the Act

As the tenant resided in a recreational vehicle (a fifth wheel trailer intended to be pulled by a vehicle), as opposed to a manufactured home, and the property where the tenant's recreational vehicle was parked was not zoned as a manufactured home park, I have considered, as an issue to be decided in this matter, whether this application falls within the jurisdiction of the *Act*.

Issue(s) to be Decided

Is there jurisdiction for the tenant's application for dispute resolution under the *Act*?

Is the tenant entitled to an order for emergency repairs pursuant to section 55?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant aspects of this matter and my findings are set out below.

The parties agreed the tenant moved his fifth wheel recreational vehicle onto the property owned by the landlords and upon which their principal residence was located beginning on March 1, 2018. There was no written agreement. The landlords invited the tenant to do so as they had a warm personal relationship. The verbal agreement was that the tenant would pay \$500.00 a month to the landlords. In return, the landlords would allow the tenant to hook up to the landlords' water and electricity for access by his recreational vehicle. The tenant testified he provided his own sewage pump.

Relations soured between the parties. On July 30, 2019, the landlords asked the tenant to vacate in four months. They provided a written notice, a copy of which was not submitted as evidence. The tenant did not pay the rent due on August 1, 2019. While he was away that day, the landlords acknowledged that they cut the power and water to the tenant's recreational vehicle. The tenant returned and found out he could no longer access electricity and water in his recreational vehicle.

The landlords stated the tenant became angry, the landlords called the police, and a court order was subsequently granted prohibiting the tenant from accessing the landlords' property or having any communication with them. A copy of the order was not submitted as evidence. Accordingly, the tenant attended the hearing in the presence of a police officer.

The tenant testified that the recreational vehicle was uninhabitable without water and electricity. He testified that he is now homeless. The tenant wants to remove his recreational vehicle but stated he does not have the money to do so. The landlords want the tenant to remove it right away.

The parties agreed that no security deposit was paid, there was no frost-free connection for utilities, and the area was not zoned as a manufactured home park. The landlords did not testify that there was any person other than themselves that could be contacted in the event of an urgent repair situation.

In his application, the tenant requested an order that the landlords reconnect the vehicle with power and water.

Analysis

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Determination of Jurisdiction

The tenant has filed his application for dispute resolution based on provisions in the *Manufactured Home Park Tenancy Act* which sets out specific criteria for tenancy agreements that may be considered within the jurisdiction of this *Act*.

Section 2(1) of the *Act* sets out what this *Act* applies to, as follows:

- 2 (1) 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.

Given the tenant did not reside in a manufactured home, or on property zoned as a manufactured home park, I must first determine if there is jurisdiction to consider this application for dispute resolution under the purview of this *Act*.

The definitions of "manufactured home", "manufactured home park", "manufactured home site", and "tenancy agreement" are outlined in the following terms in section 1 of the *Act*:

"manufactured home" means a structure, 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 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;

"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.

Residential Tenancy Policy Guideline #9. Tenancy Agreements and Licenses to Occupy, provides further clarity around the interpretation of recreational vehicles within the definition of manufactured homes and the factors that distinguish a tenancy agreement from a license to occupy, as follows:

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.*

Based on the tenant's testimony, the tenant's RV was a structure equipped with wheels, and designed to be moved from one place to another. The tenant testified that the RV was his full-time residence and it occupied an area on the landlords' property, for which he paid rent in exchange. As such, I find that the tenant's RV meets the definition provided for a "manufactured home" in the *Act*, and that it was located on a "manufactured home site".

Although the property where the tenant parked his RV was not zoned as a manufactured home park, the definition under the *Act* does not make this distinction and provides a broad interpretation which includes "the parcel...on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located".

The tenant testified that the landlords allowed the tenant to park his RV in an area on the property in exchange for rent, and that the tenant had access to a "common area" where he was able to connect to water and electricity services and have access to the RV. As such, I find that the landlord's property meets the definition for "manufactured home park" in the *Act*.

Of the seven factors listed as a guide to determining whether the tenant's arrangement was a license to occupy, rather than a tenancy agreement, I find that only two of the factors apply to the circumstances, based on the testimony of the tenant regarding the terms of the arrangement, which are:

- *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.*

Further to this, the tenant testified that there was a verbal agreement for him to park his recreational vehicle on the landlord's property and receive electricity and water services in exchange for a monthly payment of \$500.00. Although no signed agreement exists, and no security deposit was ever paid, both parties entered into a verbal agreement pertaining to the tenant's right to park and reside in his recreational vehicle on the landlord's property in exchange for money.

Therefore, based on the testimony and evidence before me, and on a balance of probabilities, I find that a tenancy agreement existed between the tenant and the landlord, for the purposes of the *Act*, and that this dispute falls within the jurisdiction of the *Act* for determination.

Emergency repairs

The Act sets out the requirement for an order for emergency repairs as follows:

27 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of property in the manufactured home park, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes,
 - (ii) damaged or blocked water or sewer pipes,
 - (iii) the electrical systems, or
 - (iv) in prescribed circumstances, the manufactured home site or the manufactured home park.

(2) The landlord must post and maintain in a conspicuous place in the manufactured home park, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted in the manufactured home park by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

The landlords acknowledged “cutting off” utilities on August 1, 2019 in violation of the verbal agreement between the parties. The landlords’ stated during the hearing that the services have remained discontinued and they have no intention of restoring the utilities. The landlords have had reasonable time to restore the services and have failed to do so.

I find the tenant has met the burden of proof on a balance of probabilities that the tenant is entitled to have the electricity and water to the unit restored immediately. I find the restoration of these services to be urgent, necessary for the tenant's health and related to the restoration of essential services.

The tenant may be entitled to compensation for loss of use but not such application has been presented.

I therefore order as follows:

1. By 1:00 PM on September 5, 2019, the landlords must reconnect the electricity and water to the recreational vehicle in a safe, workmanlike and efficiently functioning manner;
2. If the landlords fail to abide by the terms of this order, the tenant may bring an application for further relief.

Conclusion

By 1:00 PM on September 5, 2019, the landlords must reconnect the electricity and water to the recreational vehicle in a safe, workmanlike and efficiently functioning manner. If the landlords fail to abide by the terms of this order, the tenant may bring an application for further relief.

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: September 1, 2019

Residential Tenancy Branch