Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER RV & TRAILER PARK LTD - DBA PEACE ARCH and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT OLC

Introduction

This hearing dealt with a joint 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*.

All parties attended the hearing. The named respondent, a corporation owned by A.W., was represented at the hearing by her counsel, P.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 landlord be directed to comply with the *Act*?

Can the tenants recover their filing fee?

Background and Evidence

Testimony provided by the applicants confirmed the following rental agreements:

R.S. & J-A.S.: rental began September 14, 2016 paying $590.00 per month. A security deposit of $100.00 was paid, along with a $20.00 per month pet fee and a $5 per night, per guest “visitors” fee

F.R. & G.M.: rental began October 1, 2013 paying $590.00 per month. A security deposit of $100.00 was paid, along with a $15.00 per month pet fee.

J.B. & D.B.: rental began in September 2014 paying $590.00 per month. A security deposit of $200.00 was paid, along with two payments of $15.00 per month for pets.

B.B.: rental began in April 2012 with rent starting at $515.00 per month, rising to its current rate of $590.00 per month. B.B. also paid a $100.00 security deposit.

A.S.: rental began in 2007 and pays rent of “four hundred something dollars”, and also paid a $100.00 security deposit.

D.M. & D.P.: rental began in 2012 and they pay rent of $590.00 per month along with a $100.00 security deposit. Until 2017 they paid a pet deposit of $15.00 per month.

C.S. & M.H.: rental began in 2014 with rent beginning at $535.00 per month increasing to $590.00 per month. A $200.00 security deposit was paid.

R.D.J.: rental began on December 31, 2017 with rent of $590.00 per month and a $200.00 security deposit paid. A $15.00 per month pet deposit was paid in 2018.

N.J. & R.J.: rental began on August 1, 2015 with rent beginning at $550.00 per month increasing to $590.00 per month.

All parties confirmed that their security deposits continue to be held by the landlord and all parties acknowledged that they received a letter on April 22nd, 2019 directing them to pay a new rental rate of $20.00 per day starting September 1, 2019.

The applicants are seeking an Order pursuant to section 55 of the *Act,* directing the respondent to comply with *Act*. They argue that the respondent had no right under the *Act* to amend the terms of their agreements. Their application read as follows, “Landlord wishing to change the tenancy agreement unilaterally to a licensee agreement and rent increase greater than the set 2.5% plus GST, and not on prescribed form.” In support of

their application written submissions were provided which included reference to section 14 of the *Residential Tenancy Act* which says, “(1) A tenancy agreement may not be amended to change or remove a standard term (2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.”

The applicants contended that the park owner was seeking to use the *Residential Tenancy Act* when it was applicable to their needs but then distance themselves from the *Act* when it did not suit them. In support of their position the applicants referenced section 9 of the *Residential Tenancy Policy Guidelines* and explained the park owner had previously tried to enforce matters related to the park through the dispute resolution service of the *Residential Tenancy Branch*.

Counsel for the park owner argued that no tenancy agreements were in place and stated that the license agreements in place along with zoning by-laws meant the park owner was not bound by either the *Manufactured Home Park Tenancy Act* or the *Residential Tenancy Act*.

The April 22nd, 2019 letter sent to the Park’s occupants stated as follows, “Following our lawyer’s advice we must change our way of charging the monthly pads because we have been wrongly recognized as a Landlord Tenant Tenancy and our social reason of business is under **Licensor** who owns and operates and R.V. Park.” In addition to updated payment terms, the new License Agreement sent to the applicants contained fifty-four various rules and regulations.

Prior to this License Agreement, the applicants had signed a document entitled, “Terms and Conditions for Monthly Tenants.” It listed numerous rules and regulations and contained a disclaimer which said, “I have read, understood and agreed to be bound by these terms and conditions and that this application does not constitute a landlord and tenant monthly agreement.”

Amongst the “Terms and Conditions” included in the previous agreement signed by the parties are provisions which stated:

- $100 refundable deposit was required from all monthly tenants
- Maximum length of stay by any person and/or their RV at P.A. RV Park was 182 days in any 12-month period according to City of S Zoning Bylaw 12000, as amended

- Guests who sold their unit were not allowed to let the buyer to stay in this park without agreement from the park. Units older than 10 years would not be accepted in the park.
- Guests found in violation of P.A. RV Park's terms and conditions could be subjected to immediate eviction.

In their written submissions the applicants contended they should be found to be tenants because many elements typically contained in tenancy agreements were present in their agreements with the park owner. Amongst the issues raised by the applicants in support of their position that they were of "tenants" as contemplated by the *Act* (which Act they intended to rely on was not made clear) were;

- Payment of a security deposit being required
- Tenants' payment for hydro
- Tenants' paying a fixed monthly amount of rent (prior to September 1, 2019)
- Tenants are provided with a frost-free water connection
- Tenants are given exclusive possession of the site for a term
- The requirement for tenants to do all yard maintenance on their own site, or to pay the park to have done it
- An August 2011 notice sent by the Park's owner advising the occupants "that the City of S explicitly stated that 'all permanent guests are permitted to stay as long as desired.'"

The respondent's evidentiary package contained copies of the relevant municipal by-laws governing the property's use, business licence and detailed written submissions.

A review of the respondent's submissions shows the property in question is licensed in the business category as a "Tourist Trailer Park/Campsite", which limits them to providing only short-term accommodation per the municipal by-laws. Specifically, this by-law provides that lodging for not more than 182 days in a 12-month period. Evidence provided by the respondent's showed that the municipality may penalize business found to be in contravention of the by-law with fines up to $2,000.00 per day. Counsel confirmed that the respondent did not currently face any potential by-law fines but rather were hoping to avoid any potential issues that may arise in the future should the municipality begin enforcing their by-laws.

Analysis

Following a close review of all evidence and after having considered the testimony presented by all parties present at the hearing, it is evident that the agreements entered

in to between the applicant and respondent shares some traits applicable in a tenancy situation and some traits applicable in a license agreement. While the property in question is clearly not governed by the *Residential Tenancy Act* per the definition contained in section 2(1) of the *Residential Tenancy Act* some consideration must be given as to whether or not the *Manufactured Home Park Tenancy Act* applies and if so, whether the changes to the agreement proposed by the respondent are permissible.

Section 2 of the *Manufactured Home Park Tenancy Act* explains that the *Act* applies to "tenancy agreements, manufactured home sites and manufactured home parks." While Section 1 of the *Act* defines a landlord as;

> (a) the owner of the manufactured home site, the owner's agent or another person who, on behalf of the landlord, permits occupation of the manufactured home site under a tenancy agreement;
>
> (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
>
> (c) a person, other than a tenant whose manufactured home occupies the manufactured home site, who
> (i) is entitled to possession of the manufactured home site, and
> (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the manufactured home site;

A definition of a manufactured home park or site is also found in section 1 of the *Act* and it states that a "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; while "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.

A central tenet of the respondent's argument related to jurisdiction and the fact that the property in question could not lawfully accommodate tenancies because of the manner that it had been zoned. This argument runs contrary to *Policy Guideline #20*, a *Guideline* which counsel argued mis-stated the law and which was out of step with the *Interpretation Act.* I find this issue is not determinative of the matter before me. It is a factor for consideration but I find the information provided by *Policy Guideline #9* to be of greater applicability.

Policy Guideline #9 states:

> …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…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.

Guideline #9 goes on to say, “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.”

After having closely reviewed all evidence submitted by the parties, I find that I am without jurisdiction to direct the respondent to follow the *Act* because I find neither the *Manufactured Home Park Tenancy Act* nor the *Residential Tenancy Act* apply. While a significant volume of evidence was presented regarding the applicability of by-laws along with municipal zoning laws, I find, as is stated in the *Guidelines* the facts show that the principal agreements in place between the parties do not contain many of the elements central to a tenancy agreement in a manufactured home.

Despite a number of elements being present in the agreements which lend some merit to the applicants’ argument that tenancies are in place, including; being granted exclusive possession for a term, the allocation of frost-free water connections and a requirement to do all yard maintenance, a significant number of factors support the conclusion that the applicants’ and respondents’ relationship is a licence rather than a tenancy.

Specifically, the applicants, while paying a standard rate for a monthly accommodation, pay an additional nightly guest rate [when applicable], along with a monthly dog rate. Additionally, the applicants all presently pay GST on their monthly rate.

A review of the receipts entered into evidence revealed further, inconsistent and varying monthly payments for storage or other facilities. It is therefore evident that the agreement contains no “standard” monthly “rent”.

Section 13(2) of the *Manufactured Home Park Tenancy Act* states, “A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following: (f)(iv) the amount of rent payable for a specified period.” I find the above described random combination of payments results in the applicants paying a varying “rental rate” from month to month. This is demonstrated by the different payments made month to month by the occupants.

Additional reasons for finding that the parties have a license rather than a tenancy as contemplated in *Policy Guideline #9* include;

- insurance policies filed show the homes to be mobile homes, “Winnebago” RVs, camper units, motor homes or 5th wheels;
- the property in question is set up as a RV Park/campground not a manufactured home park;
- the agreement contains provisions stating that extra costs are associated with using certain recreational facilities rather than including them in the “rental” price; and
- the property is not zoned as a manufactured home park.
- while rent was changed to being paid on a daily basis, a review of the receipts reveal GST to have been previously paid on all rent

As noted previously *Guideline #9* states:

> 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.

For these reasons, I find the relationship between the parties is a licence not a tenancy and hence I have no jurisdiction under either the *Manufactured Home Park Tenancy Act* or the *Residential Tenancy Act* to direct the respondent to comply with the *Act*.

Conclusion

The application is dismissed without leave to reapply. The applicants 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 24, 2019

Residential Tenancy Branch