



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT

Introduction

On September 18, 2019, the Tenant submitted an Application for Dispute Resolution under the *Manufactured Home Park Tenancy Act* ("the Act") seeking an order for the Landlord to make emergency repairs to the site.

The matter was set for a conference call hearing and both parties appeared at the hearing. Neither party raised any issues regarding service of the application or the evidence. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

In this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary and Procedural Matters – Jurisdiction

At the start of the hearing I identified myself to the parties. During the hearing the Landlord raised the issue of jurisdiction.

The Landlord believes that this living arrangement is not a tenancy under the Act. The Landlord provided the following information:

- The tenancy agreement between the parties was not put in writing by the Landlord.
- The Landlord offered to let the Tenant move her manufactured home onto their private property.
- The Landlord set up his property and has put pads/ sites on it.

- The agreement is that the Tenant will pay the Landlord rent of \$700.00 each month on a month to month basis.
- Rent includes water electricity and sewer.
- The Landlord offered a dumping station for sewage.
- The Tenant paid a \$350.00 security deposit.
- The Tenant is the only occupant on the Landlord's property paying pad rent.

The Landlord submitted that the Tenants unit is exempt under section 4(1) of the *Manufactured Home Regulation* because park model homes are exempt from *Manufactured Home Act*.

The Landlord testified that after the Tenant moved her manufactured home onto his property, he was informed that it is illegal to use his property to allow camping. The Landlord provided an email letter dated September 4, 2019, from a bylaw enforcement officer with the Columbia Shuswap Regional District ("the CSRD") which states that there were concerns with the illegal use of the property for camping which the zoning does not permit. The mail indicates that the Landlord will be required to bring the property into compliance with zoning bylaws which will affect the Tenant's rented space. The Landlord testified that he has not received a legal order from the CSRD for the removal of the manufactured home.

The Tenant testified that her home is a 40-foot park model manufactured home. The Tenant testified that the tenancy for the site rental started on June 1, 2019 on a month to month basis. She testified that monthly rent in the amount of \$700.00 includes water electricity and sewer. The Tenant paid a security deposit of \$350.00.

Analysis

The Residential Tenancy Policy Guideline #9 Tenancy Agreements and Licenses to Occupy clarifies the factors that distinguish a tenancy agreement from a licence to occupy. The Guideline provides:

A licence 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.

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. For example, a park owner who allows a family member to occupy the site and pay rent, has not necessarily entered into a tenancy agreement. 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.

The policy guideline provides that some of factors that may 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.*

After considering the policy guideline and the testimony and evidence of the parties, I make the following findings:

I find that the basic components of a contract were met. The Landlord offered to rent the manufactured home site to the Tenant and the Tenant accepted the Landlord's offer and agreed to rent the site from the Landlord on a month to month basis. The Tenant paid a security deposit and both parties enter into the agreement voluntarily, understanding the nature of the agreement.

I have considered whether the contract is a tenancy agreement or a licence to occupy living arrangement. I find that the parties intended that there would be exclusive possession of the site for term. I find that occupancy was not given due to a personal relationship or generosity rather than business considerations. There is no evidence before me that the parties agreed that the Tenant could be evicted without reason and there is no verbal or written contract that suggests there was no intention that the provisions of the Manufactured Home Park Tenancy Act apply. I find that the Landlords submission that park model homes are exempt under the *Manufactured Home Act* is not a relevant consideration on whether there is a tenancy agreement.

I find that the parties entered into a tenancy agreement under the *Manufactured Home Park Tenancy Act*.

Issues to be Decided

- Is the Tenant entitled to an order for the Landlord to make emergency repairs to the rental site?

Background and Evidence

The parties testified that the tenancy began on June 1, 2019 and is on a month to month basis. Pad rent in the amount of \$700.00 is due to be paid to the Landlord by the first day of each month. Rent includes the water electricity and sewer.

The Tenant testified that the Landlord turned off the electricity, water and sewer pipe to the site on September 5, 2019.

The Tenant testified that when she asked the Landlord why these services were stopped the Landlord informed her that he did it under direction of the CSRD.

The Tenant testified that the services are still off since September 5, 2019. The Tenant wants an order for the Landlord to provide the services of water, electricity and sewer.

In reply the Landlord testified that when the Tenant moved onto the property, they positioned her unit on the property and piped her sewer in.

The Landlord testified that he was informed by the CSRD that it is illegal for the Landlord to use his property for camping. The Landlord testified that he turned off the electricity, and water to the rental site on September 5, 2019.

The Landlord testified that on July 26, 2019 the Tenant moved her unit to a new location on the property without getting approval. The Landlord testified that the new location is downhill from the septic tank. The Landlord testified that he asked the Tenant to move her unit back to the original area and the Tenant refused.

In reply, the Tenant testified that she moved her unit to a new location on the property. She testified that the Landlord told her that she did not have the Landlords permission and they asked her to move it back. The Tenant testified that she apologized to the Landlord; however, she cannot move it back because she cannot afford to do so.

Analysis

Section 21 of the Act provides that a Landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the manufactured home site as a site for a manufactured home, or
- (b) providing the service or facility is a material term of the tenancy agreement.

Section 26 of the Act provides that a Landlord must provide and maintain the manufactured home park in a reasonable state of repair, and comply with housing, health and safety standards required by law.

After considering the testimony and evidence of the parties I make the following findings:

The Landlord is obligated under the tenancy agreement to provide the Tenant with the services of electricity, water and sewer. I find that these services are included in the rent and are essential to the Tenant's use of the rental site.

I find that the Landlord does not have a legal order requiring him to end the tenancy or authorizing him to turn off these essential services.

I order the Landlord to immediately reconnect the services of water, electricity and sewer to the Tenant. With respect to the Tenant's loss of services since September 5, 2019; the Tenant may apply for compensation for a loss of value in the tenancy if the parties cannot reach an agreement.

I find that the Tenant moved her manufactured home without the Landlords permission. I order the Tenant to move her manufactured home to its original location on the Landlords' property within 30 days of receiving this decision. If the Tenant fails to move the rental back to its original position, the Landlord may issue a one month notice to end tenancy for failure to comply with an Order.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlords to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. I authorize the Tenant to withhold the amount of \$100.00 from one (1) future rent payment.

Conclusion

The Tenant's application for emergency repairs is successful. I order the Landlords to immediately reconnect the services of water, electricity, and sewer to the Tenants rental site.

I order the Tenant to move her manufactured home to its original location on the Landlords' property within 30 days of receiving this decision.

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 23, 2019

Residential Tenancy Branch