Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TSAWWASSEN RV RESORT and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *CNR, DRI, MNDC, OLC*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Manufactured Home Park Tenancy Act*. The tenant applied to set aside a notice to end tenancy for nonpayment of rent. The tenant also applied for an order directing the landlord to comply with the *Act,* to dispute a rent increase, and for a monetary order for the return of excess rent paid resulting from a rent increase that the tenant alleges is not in compliance with legislation.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented herself and was accompanied by her agent. The corporate landlord was represented by legal counsel.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the respondent landlord raised the issue of jurisdiction and cited a previous decision made by an Arbitrator regarding a similar dispute at the same address. In a decision dated March 22, 2019, the Arbitrator found that the *Manufactured Home Park Tenancy Act* did not apply.

Although other rulings under the Act may be persuasive, and consistency among decision makers is certainly desirable, decisions by other arbitrators are not binding and each case must be decided on its own merits.

It is particularly difficult to consider the prior ruling as I am unaware of the evidence that was before that decision-maker and the reasoning that led to the decision.

The Park is located on Tsawwassen Treaty Lands and the specific lands are owned by members of the Tsawwassen First Nation. The landlord commenced operation of the Park under an operating license agreement with the members of the Tsawwassen First Nation dated May 01, 2018. The landlord did not file a copy of this agreement into evidence.

In his written submission the landlord states that the Residential Tenancy Branch does not have the jurisdictional authority to hear this dispute, because the lands at issue are Treaty Lands owned by members of the Tsawwassen First Nation and therefore, fall under the legislative jurisdiction of the Tsawwassen First Nation and/or the Canadian Federal Government.

The management, control and possession of Tsawwassen First Nations lands are established under the Final Agreement between the Tsawwassen First Nation and the respective governments.

In his written submission, the landlord notes that Chapter 6, section 1 of the Final Agreement between the Tsawwassen First Nation and the respective governments, grants the Tsawwassen Government the power to make laws in respect of:

"the ownership and disposition of estates or interests in Tsawwassen lands, including: fee simple interests; mortgages; leases; licenses, permits easements and rights of way […]; and any conditions or restrictions on such estates or interests".

The landlord added that the right to occupy a park on Tsawwassen First Nation lands would fall into the category of "licenses".

The landlord testified that the *Act* does not apply to this matter due to their agreement regarding the operation of a park on First Nations land. The landlord also stated that they had further evidence to establish this but had not submitted the evidence prior to the hearing.

Policy Guideline # 27 states that the Legislation does not confer upon the Branch the authority to hear all disputes regarding every type of relationship between two or more parties and that the Branch only has the jurisdiction conferred by the Legislation over landlords, tenants and strata corporations.

Residential Tenancy Policy Guideline #27 Section c addresses:

Treaty Settlement Lands

Treaty lands, such as those held by the Nisga'a Nation, Tsawwassen, or Maa-nulth First Nations are not "lands reserved for Indians" (the "Treaty Lands"). Final Agreements and settlement legislation set out the relationship between federal, provincial and First Nation law making authority. Each of the Final Agreements set out a priority rule to address conflicts between the First Nation's law and federal and provincial laws.

Whether the Residential Tenancy Branch has jurisdiction on Treaty Lands will depend on the terms of the Final Agreements, and whether the First Nation has enacted law. If the First Nation has enacted its own law that may be in conflict with the Residential Tenancy Act or Manufactured Home Park Tenancy Act, it is possible that the Acts or parts of the Acts that are in conflict with the First Nation law, will be inoperable.

It is important to check the status of First Nations in the Treaty Process and if those First Nations have enacted any laws.

In her written submission the tenant filed a copy of the Tsawwassen First Nation Final Agreement.

Page 24 of Chapter 2 address:

Application and relationship of Federal Law, Provincial Law and Tsawwassen Law.

Page 25 of Chapter 2 addresses;

Relationship of this Agreement and Federal Law, Provincial Law and Tsawwassen Law

#19 of the Tsawwassen First Nation Final Agreement states as follows:

Federal Law, Provincial Law and Tsawwassen Law applies to Tsawwassen First Nation, Tsawwassen members, Tsawwassen Lands, Tsawwassen Government, Tsawwassen Public Institutions and Tsawwassen Corporations.

In the absence of an operating license agreement between the landlord and the members of the Tsawwassen First Nation and in the absence of a tenancy agreement entered into by the parties, I must base my determination of jurisdiction on the documents in front of me.

The party making the application has the onus to establish that this is a matter which falls under the *Act.* It is not reasonable to expect the tenant to have a copy of the operating license agreement between the landlord and the members of the Tsawwassen First Nation, that the tenant could have filed into evidence. However the tenant has filed a copy of the relevant sections of Tsawwassen First Nation Final Agreement.

As stated above *Residential Tenancy Policy Guideline* #27 states whether the Residential Tenancy Branch has jurisdiction on Treaty Lands will depend on the terms of the Final Agreements, and whether the First Nation has enacted law.

Also as stated above, Chapter 2 describes the relationship of the Final Agreement and Federal Law, Provincial Law and Tsawwassen Law and states that Provincial Law applies to the management, control and possession of Tsawwassen First Nations lands.

Based on the above and in the absence of a tenancy agreement between the parties and an operating license agreement between the landlord and members of the Tsawwassen First Nation, I find that a term of the Tsawwassen First Nation Final Agreement states that Provincial Law applies to Tsawwassen First Nation lands and therefore I find that I have jurisdiction in this matter.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Has the landlord imposed rent increases that are in compliance with Legislation?

Background and Evidence

The tenancy began in December 2010. There is no signed tenancy agreement in place between the parties. The tenant rents a pad from the landlord and pays a monthly rent of $530.00. In her written submission the tenant states that she has lived in this rental unit for nine years and has installed a gated wooden front porch, a brick patio and a garden.

The tenant testified that the landlord did not object to these improvements to the rental pad or to the efforts of the residents to personalize the space they occupy. The tenant provided proof that she pays utilities.

In September 2018, the current landlord took over the management of the Park. In October 2018 the rent was increased from $530.00 to $575.00. The notice of rent increase was not filed into evidence. The tenant continued to pay $530.00. On March 19, 2019, the landlord served the tenant with notice entitled "*License Agreement*" informing her that effective April 01, 2019, her monthly rent would be $725.00 payable on the first day of each month. The tenant did not sign the agreement and continued to pay rent in the amount of $530.00 per month.

On September 03, 2019, the landlord served the tenant with a notice in the form of a letter, informing her that she was in arrears of rent and that the tenancy would end if the tenant did not catch up on rent by September 18, 2019. The tenant filed this application on September 13, 2019.

The tenant is disputing the notice to end tenancy and the rent increases that were imposed by the landlord.

Analysis

Section 45 of the *Manufactured Home Park Tenancy Act* describes the form and content of a notice to end tenancy as follows:

Form and content of notice to end tenancy

45 In order to be effective, a notice to end a tenancy must be in writing and must

(a)be signed and dated by the landlord or tenant giving the notice,

(b)give the address of the manufactured home site,

(c)state the effective date of the notice,

(d)except for a notice under section 38 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and

(e)when given by a landlord, be in the approved form.

Based on the sworn testimony of the both parties and the documents filed into evidence, I find that the landlord served the tenant with a notice that was not in compliance with section 45(e) of the *Manufactured Home Park Tenancy Act.* Accordingly the notice is set aside, and the tenancy will continue.

Sections 34, 35 and 36 of the *Manufactured Home Park Tenancy Act* address rent increases, timing and notice of rent increase and amount of rent increase.

Rent Increases

34 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

35 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a)if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the manufactured home site;

(b)if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2)A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3)A notice of a rent increase must be in the approved form.

(4)If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase

36 (1)A landlord may impose a rent increase only up to the amount

(a)calculated in accordance with the regulations,

(b)ordered by the director on an application under subsection (3), or

(c)agreed to by the tenant in writing.

(2)A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-11.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Based on the testimony of both parties and the notice of rent increase dated March 19, 2019, I find that the landlord served the tenant with a notice of rent increase that is not in compliance with sections 35 and 36 of the *Manufactured Home Park Tenancy Act*. Accordingly the monthly rent will remain at $530.00 per month until it is increased in accordance with the *Act.*

In the tenant's application for a monetary order, it is not clear whether the tenant paid rent in excess of $530.00 for any of the months following September 2018. If the tenant has paid rent in excess of $530.00, pursuant to section 36(5), I order the landlord to return to the tenant any amounts paid in excess of $530.00 per month. The tenant is at liberty to make application for a monetary order if the landlord does not comply with this order.

Conclusion

The notice to end tenancy and the notice to increase rent are not valid and are set aside.

The tenancy will continue until ended in accordance with the *Manufactured Home Park Tenancy Act*.

The monthly rent will remain at $530.00 until increased in accordance with the *Manufactured Home Park Tenancy 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 *Manufactured Home Park Tenancy Act*.

Dated: December 20, 2019

Residential Tenancy Branch