Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1198470 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT; MNSD; MNDL -S; MNDCL -S; MNRL -S; FFL

Introduction

This hearing was set to deal with cross applications. A Tenant's Application for Dispute Resolution was filed under the *Residential Tenancy Act* for return of double the security deposit and compensation for other damages or loss under the Act, regulations or tenancy agreement. A Landlord's Application for Dispute Resolution was filed under the *Manufactured Home Park Tenancy Act* for unpaid rent, damage to the site, other damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenant's security deposit.

Preliminary Issues

1. Service of Hearing documents

I confirmed that the tenant had sent his Application for Dispute Resolution and evidence to the male landlord via registered mail. Although the tenant was unable to prove he sent a separate package to the female landlord, both of the landlords were together for the hearing and it was apparent to me that they both had reviewed to the documents the tenant sent to the male landlord. As such, I was prepared to deem the female landlord sufficiently served.

I confirmed that the landlords had sent their Application for Dispute Resolution and evidence to the tenant via registered mail and the tenant was in receipt of the landlord's documents.

In light of the above, I have considered the relevant documents submitted by both parties in making this decision.

2. Jurisdiction

I noted that the parties had made their applications under two different statutes and it was necessary to consider whether the *Residential Tenancy Act* (RTA) or the *Manufactured Home Park Tenancy Act* (MHPTA) applied, or if either Act applied to their agreement.

Both parties provided consistent submissions that the landlords did not provide living accommodation to the tenant. Rather, the tenant had his own recreational vehicle that he moved on to the property he rented from the landlords. There was a house on the property but the tenant was not provided use of the house under their agreement. There was also a stand-alone garage on the property that was provided to the tenant under the terms of their agreement but it was not living accommodation. The RTA applies where the landlord provides a rental unit to a tenant intended to be used as living accommodation by the tenant. In these circumstances, I find the RTA does not apply.

Where a tenant has a manufactured home, which may include a recreational vehicle, that is situated on land rented to the tenant by the landlord, the MHPTA may apply. Since the tenant moved his recreational vehicle onto the land rented to him by the landlords, I give further consideration as to whether the MHPTA applies to this tenancy, as analyzed below.

Section 2 of the MHPTA describes what the Act applies to. Section 2 provides 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.

Section 1 of the MHPTA defines tenancy agreement; manufactured home park and manufactured home site as follows:

> "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" means a tenant's right to possession of a manufactured home site under a tenancy agreement;
>
> "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 14: *Type of Tenancy: Commercial or Residential* provides information and policy statements concerning commercial tenancy agreements. The policy guideline provides, in part, with my emphasis underlined:

> **Generally**
>
> Neither the Residential Tenancy Act nor the Manufactured Home Park Tenancy Act applies to a commercial tenancy. Commercial tenancies are usually those associated with a business operation like a store or an office. If an arbitrator determines that the tenancy in question in arbitration is a commercial one, the arbitrator will decline to proceed due to a lack of jurisdiction. For more information about an arbitrator's jurisdiction generally, see Policy Guideline 27 - "Jurisdiction."
>
> Sometimes a tenant will use a residence for business purposes or will live in a premises covered by a commercial tenancy agreement. The Residential Tenancy Act provides that the Act does not apply to "living accommodation included with premises that (i) are primarily occupied for business purposes, and (ii) are rented under a single agreement.[1]
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> To determine whether the premises are primarily occupied for business purposes or not, an arbitrator will consider what the "predominant purpose" of the use of the premises is.[2]
>
> Some factors used in that consideration are: relative square footage of the business use compared to the residential use, employee and client presence at the premises, and visible evidence of the business use being carried on at the premises.[3]
>
> The Manufactured Home Park Tenancy Act applies to manufactured home sites, the parks in which the sites are located and the tenancy agreements governing them. A "manufactured home site" is defined in that Act as a site rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home. The Act defines a "manufactured home" as, among other things, a structure used or intended to be used as living accommodation. A rental or tenancy relationship over land onto which a manufactured structure is brought or intended to be brought, will be outside the scope of the Manufactured Home Park Tenancy Act unless it is within those definitions.

The "lease agreement" executed by the parties on April 24, 2019, provides for use of the leased property among other things, and includes the following terms:

1. **Lease Portion:**
    a. The drive way from the gate is the common driveway and to divide the Property into the South side and the North side. Lease Portion covers the Land of the North Side of the property from the front to the back (not passing the creek).
    b. A map outlined the Lease Portion (Schedule A) is attached for details.

2. **Outbuilding included:**
    a. The garage located on the North side of the drive way is included.

3. **Excluded area:**
    a. SOUTH SIDE OF THE PROPERTY (THE BACK AREA AFTER THE LOWER SHED).
    b. The house and the outside area approx. 1000 sq. ft at the back and around the house inside and outside the fence on the South side Not included in the Lease.
    c. Potential Right Of Way on the south side
    d. A drawing as a Schedule A for reference.

5. **Nature of the Lease:** For Agriculture purpose. Raising chicken and food cropping.

Page 1 of 4

7. **Permitted use:**
    a) Farming purpose and raise chicken only. No other commercial activity is allowed.
    b) Selling produce at the Lease property is subject to City's permission.
    c) Only one Trailer is allowed at the property for Lessee to live in and subject to City's permission.

14. **Lessee's Obligations:**
    I. Lessee understands that it is his responsibility to confine his use of property with in the City guidelines.
    II. To comply with the City bylaws and Rules, and the regulations in conjunction with ALR guidelines;

The landlords were of the position the primary purpose of the lease and primary use of the land was commercial as the tenant's use of the land was to raise livestock and grow food crop(s). The tenant was given permission to move a recreational vehicle onto the property provided it be a permitted use by the City, which the tenant was to ensure under term 14 of their agreement. The landlord described the area of land provided to the tenant as being approximately 1 acre or 20,000 sq. ft. The garage provided to the tenant was for storage or whatever he needed to use it for in his farming activity, but it was not living accommodation.

The tenant submitted that his use of the land was a combination of agricultural and residential as he would be living on the property in his recreational vehicle and farming. The tenant was of the position that agricultural use is not the same as commercial use. The tenant described the land he was provided under the agreement as being approximately 2 to 2.5 acres. The tenant

testified that he raised pigs, chickens and intended to plant a garlic crop. The tenant testified that the garage was approximately 1,000 sq. ft. and he used the garage for storage and his store front to sell his agricultural goods. The tenant did move his recreational vehicle onto the property to be used as his living accommodation. The tenant submitted that he has since removed his recreational vehicle from the property because the City ordered the disconnection of the utilities to the recreational vehicle. The tenant submitted that he could not get permission to live in the recreational vehicle on the property because that required the owner of the property to establish the property was being used for agricultural purposes to the satisfaction of the ALR and then the City.

Upon review of the "lease agreement" I note that it specifically states in term 5. that the purpose of the agreement is for "agriculture purpose" which are described as being raising chickens and food cropping. Term 7 of the agreement describes the permitted uses on the property and the only permitted use of the land that is without condition is "farming" and "raising chickens". Term 7 permits selling of produce and for the tenant to live in a trailer on the property but these permitted uses are conditional upon the City's permission and term 14 places the burden to obtain the City's permission upon the tenant. In light of these terms of the agreement, it is apparent that the landlords' only unconditional obligation to the tenant is to provide the tenant land to farm and raise chickens.

Also of consideration in making my decision with respect to jurisdiction is the area of land set aside for the manufactured home in comparison to the area of land provided for farming and raising chickens. The lease agreement refers to Schedule A which is a diagram of the property that outlines the area included in the lease, the area for farming purposes, the location of the garage, and the spot where the recreational vehicle may be placed on the property. Upon review of this diagram, I note that the area for recreational vehicle is very small in comparison to the garage and all of the other land designated for farming purposes.

Based on all of the terms of the agreement, including Schedule A, it is clear to me that the primary use of the land that was conveyed to the tenant by the landlord, without any condition, was farming activity and I find that the tenant's placement of a recreational vehicle on the property to use as living accommodation was conditional and ancillary to the permitted primary use of the leased land by the tenant.

While the tenant was of the position that agricultural use of the property is different than commercial, I find that agriculture includes business or commercial activity as the goods produced on a farm are frequently sold or traded and the tenant acknowledged that he did sell or intended to sell goods raised or grown on the property from the garage. The definition of agriculture is: "the science or **practice of farming**, including cultivation of the soil for the growing of crops and the rearing of animals to provide food, wool, and other products." The definition of "farming" is: the activity or **business** of growing crops and raising livestock.

In light of the above, I consider the agreement between the parties to be predominantly an agreement concerning the lease of farm land and it falls outside of the jurisdiction of the MHPTA. Therefore, I decline to take jurisdiction to resolve the monetary claims the parties may have against each other.

It is important to note that the above analysis is prepared solely for the purpose of determining whether the MHPTA applies to the lease agreement between the parties, which I have found it does not, and my analysis does not extend to any other applicable law or jurisdiction. As I informed the parties during the hearing, the parties may have claims against each other but that they must pursue their claims in the appropriate forum as I cannot take jurisdiction to resolve a dispute that falls outside of the RTA or MHPTA. The parties remain at liberty to pursue their claims against each other in the appropriate forum which may include Provincial Court (Small Claims division) or the Civil Resolution Tribunal.

Conclusion

I have declined to take jurisdiction to resolve these claims as I find their agreement falls outside of the *Residential Tenancy Act* and 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 *Residential Tenancy Act*.

Dated: January 30, 2020

Residential Tenancy Branch