Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, LRE (for the applicant)
FFL MNDCL-S MNDL-S MNRL-S OPC (for the respondent)

Introduction

In these cross applications, the applicant sought compensation under section 60 of the *Manufactured Home Park Tenancy Act* ("Act"). They also sought an order under section 63 of the Act. The respondent (alternatively referred to as the "landlord" in their application") sought compensation under section 60 of the Act.

The applicant filed for dispute resolution on September 19, 2019 and a dispute resolution hearing was originally held on November 25, 2019. That hearing was presided over by a different arbitrator, who adjourned the matter to a hearing on January 21, 2020 (before for) for reasons of service of evidence. The respondent filed a cross application on January 8, 2020. (The hearing for that application was scheduled for March 9, 2010.) Both applications will be addressed in this decision.

On January 21, 2020, the applicant and the respondent, a legal advocate for the applicant, and three witnesses, attended the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. At the end of the hearing, I explained that the matter would either be adjourned to March 9, 2020, or that the application would be dismissed on jurisdictional grounds.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the preliminary issues of these applications.

Preliminary Issue: Jurisdiction of the Act

This dispute involves a tree (located on the respondent's property) being either negligently or wilfully felled onto the applicant's trailer, crushing the applicant's personal property stored therein. Before I am in a position to determine (or not determine) the merits of the parties' applications, I must be satisfied that I have jurisdiction.

"Jurisdiction" means a court's or tribunal's power or authority to decide a case, or, to issue a decree. In other words, it refers to the subject matter and limits of a decision-maker's authority. Anything outside the jurisdiction of a decision-maker must, in most cases, be decided upon by a court of competent jurisdiction.

My jurisdiction as an arbitrator (being granted through delegated authority under s. 9) is set out in the Act, and the Act thus defines what may or may not fall within that authority.

Section 2 of the Act is the starting point in determining whether I have jurisdiction. I shall reproduce it here in full:

> What this Act applies to
>
> (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.
>
> (2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

The next step is determining whether there exists a tenancy agreement in this dispute. If there is a tenancy agreement, then the Act applies, and it follows that I have jurisdiction. If there is no tenancy agreement, then the Act will not apply, and I will be without jurisdiction to determine the merits of this dispute. If the latter is the case, then the dispute would fall within the purview of the Provincial Court of British Columbia. Or, for smaller claims, possibly with the Civil Resolution Tribunal.

In either case, the parties will have recourse to pursue their claims through the small claims process. That I may not have jurisdiction is not the end of the matter in terms of the parties' right to pursue damages.

A “tenancy agreement” is defined in section 1 of the Act as

> 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 [.]

The requirements for tenancy agreements are set out in s. 13 of the Act. While I will not reproduce the full section, it is important to note that a “landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.” Additional requirements are listed under s. 13(1) of the Act.

It is also important to note that s. 1 of the Act defines a “tenancy” to mean “a tenant's right to possession of a manufactured home site under a tenancy agreement”.

We must now turn to Part 2 of the *Manufactured Home Park Tenancy Regulation,* B.C. Reg. 481/2003, which outlines tenancy agreement requirements. Section 10 of the Act, which is in Part 2, states that

> A landlord must ensure that any tenancy agreement entered into or renewed by the landlord on or after the date the Act comes into force complies with this Part.

Section 11 (“Disclosure and form of agreement”), in Part 2, of the Act reads as follows:

> (1) A landlord must ensure that a tenancy agreement is
>
> (a) in writing,
> (b) signed and dated by both the landlord and the tenant,
> (c) in type no smaller than 8 point, and
> (d) written so as to be easily read and understood by a reasonable person.
>
> (2) A landlord must ensure that the terms of a tenancy agreement required under section 13 *[requirements for a tenancy agreement]* of the Act and section 12 *[standard terms]* of this regulation are set out in the tenancy agreement in a manner that makes them clearly distinguishable from terms that are not required under those sections.

In this case, while there was a “tenancy agreement” – and I use this term in quotations because it is in name only that it ought to be called – in existence on the date of the

incident (which occurred on June 15, 2019), very few of the requirements under the Act were actually in place.

In other words, while the landlord had "prepare[d] in writing" a document titled "Residential Tenancy Agreement" and which is a Residential Tenancy Branch form (#RTB-1), and a copy of which was submitted into evidence, the document suffers from the following omissions and errors:

1. the document is one that is generally used for tenancies under the *Residential Tenancy Act,* and not one that is recommended for use under the *Manufactured Home Park Tenancy Act* (form RTB-5). While this is a not fatal flaw by any stretch, it weakens the applicability of the document to the legal relationship intended by the parties;

2. under the signature section of the document, on page 6, the heading of the section states that "By signing this tenancy agreement, the landlord and the tenant are bound by its terms."

   While both parties' names appear under the landlord and tenant signature portions of the document, the respondent's (that is, the potential landlord's) signature is nowhere to be found, nor is there any date to suggest that the respondent had contemplated signing the agreement. However, the applicant's signature appears, and is dated June 23, 2019; and,

3. an Addendum is part of the document, and within which is a clause requiring the applicant (the then-potential tenant) to produce a proof of occupancy and liability insurance for his 48' fifth wheel livable trailer and a temporary permit of insurance for a livable fifth wheel RV.

   The clause is rather lengthy, but at the end of it appears a handprinted notation "23•June•2019 – Deadline of Sept.15, 2019 to be re-addressed due to insurance issue on 48' trailer'

Applying the law to the facts, with focus on the lack of both parties' signatures on the Residential Tenancy Agreement document, I find that the parties did not enter into a tenancy for the purposes of section 1 of the Act. It follows, then, that as there was, and is, no tenancy under the Act, that the Act does not apply to the claims as submitted by the parties.

It is worth noting that the applicant's application also sought an order under section 63 of the Act. This section permits an arbitrator to make an order restricting or suspending a landlord's right to enter a manufactured home site. The applicant explained that he had sought this order because he has "not [been] allowed back on the trailer park by the landlord."

While I did not hear full submissions from the parties regarding this particular claim, the landlord did not refer to or explicitly dispute this specific allegation during her testimony. I find that this fact supports my interpretation that there is no tenancy.

And, while such an order would not have granted the applicant permission to enter the property for whatever reason, as these orders are directed at landlords, the undisputed fact of the applicant's inability to enter the property supports the conclusion that the respondent in no way intends to agree to the applicant's *rights to possession of a manufacture home site or use of common areas*. I emphasize the latter as this is a crucial element of a tenancy. And this would include common areas where the applicant's property might be situated.

Finally, while the preliminary conduct of the parties may suggest that there was an *intention* to enter into a tenancy agreement – the provision of a security deposit, or the pre-payment of rent (before the applicant had even taken up residence, which he never did) for example – the lack of execution of the tenancy agreement document by both parties, including the rather delayed signing of the document by only the applicant, must be considered to run counter and essentially void any initial intention of the parties.

That the respondent never signed the document is, I find, important. The tree fell on the applicant's trailer on June 15, 2019. The applicant did not sign the document until June 23, 2019. The respondent never signed the document. The applicant filed for dispute resolution on September 19, 2019, a full three months after the tree incident.

I find that the failure on the respondent's part to sign and date the document is a clear indication that whatever offer of a tenancy there may have been was revoked. No tenancy agreement was ever executed. In other words, the respondent's failing to sign the tenancy agreement is, I find, a revocation of whatever offer may have been made. There is, I conclude, not tenancy and no tenancy agreement between the parties in this dispute.

Conclusion

For the above-noted reasons, I find that I am without jurisdiction to hear the applicant's and respondent's applications. I dismiss both applications.

Accordingly, the dispute resolution hearing scheduled for March 9, 2020 is hereby cancelled.

As noted earlier in this decision, the parties are at liberty to pursue their claims through the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: January 22, 2020

Residential Tenancy Branch