Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding William Park (President - No 151 Cathedral Ventures Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This matter dealt with 12 applications to cancel 12 Notices to End Tenancy for 12 manufactured home park sites, for the landlord/respondent to comply with the Act, regulations and tenancy agreements and to recover the filing fees for each application.

A substantial amount of documentary evidence, photographic evidence and written arguments have been submitted by the parties prior to the hearing. I have reviewed all the relevant submissions.

I also gave the parties ample time for oral submissions, cross examinations and to call witnesses.

All parties were affirmed.

Preliminary Matters

This matter was reconvened from an adjourned hearing dated December 17, 2019. The adjournment was made so that the Respondent's Counsel could file a discontinuance of a matter relating to this application with the Supreme Court of British Columbia. This was required under section 51 of the Residential Tenancy Act (please refer to the interim decision dated December 17, 2019). The Respondent's Counsel confirmed that the discontinuance was filed, and he provided copies of the discontinuance to the Residential Tenancy Branch and the Applicants' Counsel. The Applicants' Counsel confirmed receiving the discontinuance and agreed to move forward with the hearing.

The lead Applicant Mr. B. submitted signed letters authorizing him to represent all of the other Applicants in this proceeding.

The parties have previously agreed that a court recorder would transcribe the hearings and the Respondent's Counsel undertook to provide copies of the transcriptions to both the Applicants' Counsel and the Residential Tenancy Branch. It should be noted the Arbitrator has written this decision based on the documented evidence submitted, the party's testimony and the Arbitrator's notes from the hearing.

Issue(s) to be Decided

1. Does the Residential Tenancy Act have jurisdiction in this matter?
2. Are the Applicants entitled to an order to cancel notices to end tenancy?
3. Has the Landlord complied with the Act, regulations and tenancy agreement?
4. Are the Applicants entitled to recover the filing fees for these applications?

Background and Evidence

The Respondent's Counsel began his opening remarks by saying this is the first hearing the parties have had the opportunity to directly address whether the Manufactured Home Park Tenancy Act "MHPTA" has jurisdiction in this situation or not. In previous applications the jurisdiction issue was dealt with by arbitrators with no formal submissions made by the parties. The Respondent's Counsel said jurisdiction is the primary issue in this hearing and it is crucial that the issue of jurisdiction is finally decided.

Further the Respondent's Counsel said if the MHPTA has jurisdiction the Respondent concedes that the Notices to End Tenancy issued on September 12, 2019 are not on the required forms as stated in the Act and therefore the notices are not valid. Counsel continued to say if it is found that the MHPTA does not have jurisdiction then the MHPTA has no authority to make judgements in this situation and the Respondent can proceed with the evictions and any other legal actions.

The Respondent's Counsel indicated that they believe the burden of proof is on the Applicants to prove that there are tenancy agreements. Further the Applicants must prove the criteria in the policy guidelines # 9 and # 27in the Residential Tenancy Branch "RTB" Policy Guidelines to show a tenancy exists. The Respondent's Counsel continued to say the Applicants have not submitted documentary evidence to prove their case and the Applicants are relying on previous decisions to support their claim that the MHPTA has jurisdiction. The Respondent's Counsel continued to say that section 57(2) of the MHPTA says cases are decided on the merits not on precedents from previous decision. As well, the Respondent's Counsel said the Applicants' trailers do not qualify as manufactured homes and the MHPTA excludes vacation trailers under the Act. The vacation trailers owned by the Applicants are used for seasonal use only, which makes these agreements licenses to occupy, not tenancy agreements. The Respondent's Counsel said for these reasons which are expanded in his written submission and addition information which will be provided in the

Respondent's testimony, the Respondent is requesting the Applicants' applications be dismissed because the MHPTA does not have jurisdiction in this situation.

The Respondent started his affirmed testimony by saying the property the Applicants' trailers are on is zoned as a campsite/RV Park and is not under the jurisdiction of the MHPTA. The 7 acres land parcel the Respondent owns and operates as a manufactured home park is under one land title but has several uses. There are full time manufactured homes and then there are vacation homes with different agreements. The Applicants have seasonal agreements from April to October and then there are also vacation renters with daily use sites. Part of the property is zoned CT2 which is for campground/RV Park use and the other parcel is zoned A1. The Respondent continued to say he purchased the property in 2005. At the time of purchase the previous owner had a tenancy agreement with a company "I.B. RV Park Inc." who operated the campground. This tenancy was continued after the purchase until 2010 at which time "S. RV and Campground" took over the operations of the campground and RV Park. The Respondent "W.P." said he was unaware of the tenancy agreements that "I.B. RV Park Inc." had entered into with the Applicants/Tenants. The Respondent said "I.B. RV Park Inc." was not a manager or agent for his company and he viewed "I.B. RV Park Inc. as a tenant doing business on his property. The Respondent said when he found out about the tenancy agreements with the Applicants/Tenants he thought it was a misunderstanding and the agreements would be corrected to "Licenses to Occupy". The Respondent said this did not happen.

Following this there were a number of RTB applications and litigations. In all but one matter the MHPTA was found to have jurisdiction for the sites in question. The Respondent's Counsel said these matters were separate to the present applications and the issue of jurisdiction was not formally adjudicated. Consequently, pursuant to section 57 of the Act (matters are decided on their merits not previous decisions) and that the process for establishing jurisdiction has not formally been heard, the Respondent and the Respondent's Counsel said these decisions should not set precedent for the present applications.

The Respondent continued to say it is worth noting that the agent for "I.B. RV Park Inc." who signed the tenancy agreements is J.M. and she is also an applicant in this proceeding. The Respondent said it is curious that she is not in attendance at the hearing as an applicant or a witness.

The Respondent said he wanted to review the alleged tenancy agreements. Firstly, the Respondent said he or his company has never acknowledged the tenancy agreements to be valid. The agreements were made without his knowledge by his tenant who was not his agent. The agreements also state they are for seasonal occupancy from April to October and they are not the Applicants' principal residence as their principal residence addresses are on the agreements. The Respondent continued to say the trailers are not removed in the winter months, but the trailers are winterized by the Applicants and they are allowed to store the trailers on their sites in the park.

Further, the Respondent said the trailers all have VIN numbers except one that the VIN could not be found. This indicates these units are vacations trailers and not manufactured homes. As well the Respondent said these units are not affixed to the ground but are on wheels and can be moved which is part of the definition of a vacation trailer and not a manufactured home. The Respondent said another distinguishing feature that makes these units vacation trailers is that they are not plumbed or electrically wired like manufactured homes, and the sewage system does not comply with a manufactured home. The Respondent said the only conclusion one can make is that these units are vacation trailers and are not under the jurisdiction of the MHPTA.

The Respondent's Counsel made reference to previous B.C. Supreme Court matters "L court case" and to "M court case" and submitted that these cases and decisions should not set precedent or have any influence in determining the present matter.

The Respondent continued to say that his company has made mistakes by issuing notices to the Applicants on MHPTA forms and participating in RTB disputes, but the Respondent has never conceded that the MHPTA has jurisdiction in this campground and RV Park.

The Applicants' Counsel asked the Respondent if "I.B. RV Park Inc." operated the park under his ownership. The Respondent said yes but "I.B. RV Park Inc." was a tenant not his agent. The Applicant's Counsel said that in the Respondent's pleadings for a civil case in 2005 regarding issues arising from the park, the Respondent said "I.B. RV Park Inc." would continue to operate the park and act as manager on a month to month basis. The Respondent said he viewed "I.B. RV Park Inc." as a tenant not an agent or manager.

The Applicants' Counsel asked the Respondent if the Respondent could enter the Applicants' units without notice at any time in the season April to October or in the winter season. The Respondent said they would ask permission unless there was an emergency like pipes freezing. The Applicants' Counsel said this supports the Tenants' submissions that they have exclusive occupancy of the units.

Further, the Applicants' Counsel asked the Respondent if the tenancy agreements are titled Manufactured Home Site Tenancy Agreements and if the terms in the agreement are that the length of tenancies are annual, and the type of sites are seasonal. The Respondent said yes, the agreements are tilted that way and the agreements were written up, some are annual/seasonal, and some are annual/annual. The Respondent continued to say he does not accept that the tenancy agreements are binding on him.

The Applicants' Counsel then referred to a number of previous BC Supreme Court matters "L. court case", Judge H decision and "J.M. court case ". (*These past decisions will be considered as evidence under Common Law but will not have precedential influence*. *Arbitrator's note)*

The Applicants' Counsel continued to ask the Respondent if he offered to extend the tenancy agreements to the Applicants if they would pay the full manufactured home park rental amount which is approximately 3 times the rent paid by the Applicants at the present time. The Respondent said yes, and he would offer that again right now at the hearing. The Applicants' Counsel commented that maybe this dispute is primarily about the amount of rent paid by the Applicants.

The Applicants' Counsel said they wanted to go through some of the terms of the tenancy agreement. They are as follows;

1. The length of tenancy on most of the agreements is annual and the type of site is named as seasonal on most of the agreements.
2. Water, sewer, garbage, cable, recycle and parking are included in the tenancy agreement and on two sites winterizing is included.
3. Washrooms and laundry are differentiated in the tenancy agreement from the Applicants and vacation renters.
4. The rules for vacation renters are differentiated from the rules for the Applicants who are subject to the MHPTA.

The Respondent said he still disputes that the agreements are binding on him because he was unaware of them and the agreement with "I.B. RV Park Inc." was not disclosed to him at the time of purchase.

The Respondent continued to say that there are three types of agreements at the park. First, there are Manufactured Home tenancies, second, license to occupy and third, vacation renters. The Respondent said the Applicants are license to occupy occupants.

The Respondent's Counsel said that these three types of agreements should be harmonized into tenancies and vacation renters.

The Applicants' Counsel said to change the agreements or to harmonize them is not in the Residential Tenancy Act authority to do.

The Respondent's Counsel said because the agreements are for seasonal use, that makes them recreational or vacation sites not residential sites. Therefore, these units are not in the jurisdiction of the MHPTA.

The Applicants' Counsel called Mr. B. to testify. The lead Applicant Mr. B. said that when he moved into the park, he understood he was renting in a MHP site on an annual basis with personal use of the park from April to October. In the winter he had access to his unit, but it would be winterized and was not for long term stays. The Applicant said he did some renovations to his unit over one winter and that was not a problem for him to gain access or for the Respondent. Consequently, Mr. B said that because he

had access in the winter to complete renovations this supports his position that he has exclusive use of the site.

The Applicant continued to say all the units are semi permanent or permanent, and in some cases, there are additions to the units. The tenancy agreements say it is an annual rent payment but many of the Applicants have made arrangements to pay monthly. As well, there are some of the units that are park models and therefore qualify for manufactured home parks.

The Applicant said 5 years after he moved into the park the Respondent's agent J.M. who worked for "I.B. RV Park Inc." presented him with the Manufacture Home Site Tenancy Agreement which commenced on January 1, 2009. The Applicant continued to say the other Applicants' tenancy agreements are similar to the one he signed.

The Applicant continued to say that Residential Tenancy Branch Policy Guideline # 9 outlines the criteria to determine if a vacation home qualifies under the MHPTA. The Applicant said these are the reasons that the homes of the Applicants are under the jurisdiction of the MHPTA.

1. The Applicants were told the sites were manufactured home sites and the tenancy agreement is titled Manufactured Home Site Tenancy Agreement.
2. The Respondent has done business with the Applicants using MHPTA forms and by using the Residential Tenancy Branch dispute resolution process to handle rent increases and disputes with the Applicants. This clearly indicates the Respondent thought the MHPTA had jurisdiction over the Park.
3. The Applicants' homes are second homes and not just for recreational use.
4. The Applicants believe the Park is a manufactured home park as the Respondent operates it as a manufactured home park what ever the zoning is.
5. The Applicant agrees there is a campground on the property, but the tenancy agreement differentiates vacation renters from the Applicants' tenancy agreement. The Manufactured Home Site Tenancy Agreement signed by the Applicants have a clause that indicates the Applicants/Tenants are subject to the MHPTA.
6. Rent is calculated on an annual basis and is due on an annual basis. By way of arrangement with the Respondent some Applicants pay on a monthly basis. No GST is calculated on the rent.
7. Some utilities and cable are included in the tenancy agreement.
8. There are no visiting hours imposed.

In addition to these points the Applicant said some other units in the Manufactured Home Park that are similar to the Applicants' units but did not receive an eviction letter. These units paid rent at the manufactured home park sites amount not the seasonal rent amount. As well the Respondent has offered to let the Applicants stay in the park if they sign a new tenancy agreement at the manufactured home site rental amount which

is approximately 3 times the current rental rate. The Applicant said he believes the Respondent is doing this just to increase the rent.

Further, the Applicant said that the Respondent may or may not have been aware of the Applicants' tenancy agreements, but it is not the Applicants responsibility to inform the Respondent of tenancy agreements when it was the Respondent's manager that implemented the tenancy agreements. The Applicant said the Respondent should have done his due diligence when purchasing the property and when "I.B.RV Park Inc." was managing the RV Park and campground. The Applicant said the Respondent purchased the Park in 2005 and "I.B. RV Park Inc." operated the Park up to 2010.

The Applicant also requested that if successful, the Respondent should comply with the Act, regulations and tenancy agreement. The Applicant requested an order to stop the Respondent's action to collect $55.00 per day as a vacation rental fee from each of the Applicants, and the rent should be returned to the present rental amounts for each Applicant.

The Respondent's Counsel questioned the Applicant if he used the site year-round. The Applicant said he did not but that he understood other Applicants did and he has used the site one winter for renovations and other times for short term stays. The Respondent's Counsel said this is inconsistent with the agreement that says the sites are for seasonal use only from April to October.

Further, the Respondent's Counsel said that it is curious that applicant J.M. who wrote the Manufactured Home Site Tenancy Agreements for "I.B. RV Park Inc." has not been called as a witness and has not attended the hearing as she could bring clarity to the issues around the tenancy agreement. Respondent's Counsel commented that this is a flaw in the Applicants' case.

The Respondent's Counsel said in closing, that he hopes this decision will be final and binding on the parties. If the Residential Tenancy Branch finds it has jurisdiction it will be precedent setting for all campgrounds and manufactured home parks. Further, Counsel believes the Applicants' cases are primarily supported by previous decisions which should not have any precedence in this matter.

Further, the Respondent's Counsel said the Applicants have not submitted any evidence other that irrelevant RTB and Court decisions which the RTB is not bound to follow. Counsel continued to say the Respondent has provided overwhelming evidence for a lack of jurisdiction. The Respondent has submitted evidence and testimony that the agreements between the Respondent and Applicants are a license to occupy and not a tenancy under the MHPTA. The Respondent has shown the following:

1. The rental sites are seasonal in nature and the applicants are prohibited from using the sites in the winter.
2. None of the Applicants use the sites as their principal residence.

3. None of the Applicants' vehicles comply with the definition of a manufactured home.
4. The Applicants' vehicles have VIN numbers and are not registered as manufactured homes.
5. The Respondent has never conceded that there is a tenancy agreement between the Respondent and the Applicants. He has always communicated to the Applicants that the agreement between them is a license to occupy.
6. With respect to Residential Tenancy Branch Policy Guideline #9, the Respondent has provided evidence and testimony to show the Applicants' homes are not manufactured homes and are not under the jurisdiction of the MHPTA:
    - The sites are used for recreation and not for residential use.
    - The sites are located in a campground or RV park not a manufactured home park.
    - The Applicants' homes do not meet zoning bylaws for a manufactured home park.
    - There are no services provided in the winter including frost-free water connections
    - Although no visiting hours are imposed on the Applicants, there is no access to the park or sites during the winter.

The Respondent's Counsel continued to say that RTB is not bound by previous RTB or court decisions, so this matter should be decided on the merits alone of the case. As well, the Residential Tenancy Branch is the only authority to determine jurisdiction in matters involving tenancies, so a final and binding decision is needed on the issue of jurisdiction for this Park. Counsel requested that the Residential Tenancy Branch find that these agreements are licenses to occupy and not tenancy agreements. Consequently, Counsel requested the Residential Tenancy Branch to decline jurisdiction.

The Applicants' Counsel said in closing that it is not the job of the RTB to change or harmonize the agreements between the parties, but to determine if there is a tenancy agreement between the parties. Counsel continued to say that the Applicants have a tenancy agreement and the MHPTA has jurisdiction for the following reasons.

1. The Respondent's agent/manger provided and entered into a "Manufactured Home Site Tenancy Agreement" with each of the Applicants.
2. The Applicants have exclusive right of occupancy for 6 months and are able to store their units on the sites for the winter.
3. The Respondent has offered to continue the tenancies if the Applicants will agree to a rent increase of approximately 3 times the present amount.
4. The Applicants submitted previous RTB and Court decision that confirmed the MHPTA has jurisdiction between these parties.
5. The tenancy agreement between the parties differentiates them between vacation renters and the Applicants. The tenancy agreement says the Applicants are subject to the MHPTA.

6. The Applicant has given testimony and provided evidence to show the Applicants have met the criteria of Policy Guideline #9, to establish this is a tenancy and not a license to occupy as follows:
    - The Applicants units are full time at the park and the Applicants use them as second homes.
    - The Applicant was told when he moved into the park that it was a Manufactured Home Park and his site was subject to the MHPTA.
    - Rent is calculated on an annual basis and there is no GST calculated on the rent payments.
    - The Applicants pay for electricity.
    - Two of the tenancy agreements include “water winterized”.
    - No visiting hours are imposed, and the Applicant indicated they have had access to the units in the wintertime.
7. The Applicants’ Counsel said if the written tenancy agreements are set aside, the tenancy would still meet the criteria of a verbal month to month tenancy as defined by the Act.
8. The Respondent does not have the right to enter the property without notice.
9. The Applicants do not pay the taxes on the property.
10. The Applicants cannot be evicted without reason as proven by the Respondent’s notice to vacate dated September 12, 2019

In summary, the Applicants’ Counsel said there has been much litigation with regard to the relationship between these parties and others in the park. All but one decision has upheld these tenancies are under the jurisdiction of the MHPTA. Counsel concluded by requesting the Residential Tenancy Branch accept jurisdiction and dismiss the notice to vacate as it does not comply with the Act.

Applicant Mr. B. said in closing, that the Arbitrator should refer to the key arguments of the Applicants on pages 50- 52 and 157- 158 as well and the Court decisions and RTB decisions that support the Applicants claim that this is a tenancy and the MHPTA has jurisdiction.

Further, the Applicant requested the Respondent’s actions to collect a $55.00 daily rental fee from the Applicants be cancelled, and the rents be returned to the agreed tenancy amounts.

Analysis

The Manufactured Home Park Tenancy Act was established to govern tenancies in manufacture home parks. The Act states what it applies to and what it does not apply to as follows:

What this Act applies to

Section 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.

(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.

What this Act does not apply to

Section 4 This Act does not apply with respect to any of the following:

(a) a tenancy agreement under which a manufactured home site and a manufactured home are both rented to the same tenant;

(b) prescribed tenancy agreements, manufactured home sites or manufactured home parks.

Further, clarification of the jurisdiction of the Manufactured Home Park Tenancy Act "MHPTA" is found in the Residential Tenancy Branch Policy Guidelines # 9 "Tenancy Agreements and License to Occupy" and Policy Guideline # 27 "Jurisdiction"

The Act and the Policy Guidelines provide the law and criteria to determine if the MHPTA has jurisdiction in a dispute. Further to these references, an arbitrator must look to the intent of the parties and the history of what has taken place leading up to the dispute.

In reviewing the past actions of the parties, we must be aware and comply with Section 57 (2) of the Act which says:

Dispute resolution proceedings generally

Section 57 (2) The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

Although past decisions do not set precedent, pursuant to section 84 of the Act past decisions can be included as evidence to a hearing. As evidence these decisions are not precedential but informational.

Common law applies

Section 84 except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

The first and the primary issue of these applications is whether the MHPTA has jurisdiction in this dispute between these parties. The Respondent/Landlord says the arrangement between the parties is a license to occupy which is not under the jurisdiction of the MHPTA. The Applicants/Tenants say they have a Manufacture Home Site Tenancy Agreement which is under the jurisdiction of the MHPTA.

I have reviewed the relevant evidence submitted, heard the testimony of both parties and followed the arguments of both Counsels. The parties will abide by the following final and binding decision.

The first issue is that the Respondent said he does not acknowledge the Manufactured Home Site Tenancy Agreement submitted by the Applicants because he was unaware of the tenancy with "I.B. RV Park Inc." which existed when he purchased the property. As well the Respondent said I.B. RV Park Inc. was not his manager or agent and the Manufactured Home Site Tenancy Agreements entered into by "I.B. RV Park Inc." are not binding on him. Further the Respondent and his Counsel submitted evidence that the Applicants' units do not qualify as manufactured homes and the park is not zoned as a manufactured home park but as a campground RV Park. The Respondent's position is that the tenancy agreements are not binding on him and the Applicants' trailers do not qualify as manufactured homes. Consequently, the tenancy agreements submitted by the Applicants are neither valid nor binding on the Respondent.

The Applicants position is that "I.B. RV Park Inc.". operated the Park from 2005 to 2010 under the ownership of the Respondent. The Applicant said "I.B. RV Park Inc." was the manger of the Park and the Applicant gave undisputed affirmed testimony that the Respondent submitted written evidence to a civil legal action in 2005 that said "I.B. RV Park Inc." was the manager for the Campground and RV Park owned by the Respondent.

I have reviewed the purchase agreement dated May 2, 2005 and in section 3.2 there is a reference to leases and tenancy agreements referred to in schedule D. "I.B. RV Park Inc." is named in that Lease and Transfer Agreement. It appears the Respondent should have been aware of the lease with "I.B. RV Park Inc." if he did his due diligence. Further, "I.B. RV Park Inc." continued to operate the Campground and RV Park from 2005 to 2010 under the ownership of the Respondent. On the balance of possibilities, it appears that "I.B. RV Park Inc." was acting as the Respondent's manager/agent.

Given this and that I have no reason to dispute the Applicant's testimony. I find that "I.B. RV Park Inc." was the manager or agent for the Respondent from 2005 to 2010.

I find that as "I.B. RV Park Inc." was the manager of the Campground and RV Park for the Respondent, the Respondent is bound by the Manufactured Home Site Tenancy Agreements entered into by "I.B. RV Park Inc." with a start date of January 1, 2009. The contracts are binding on the Respondent.

The second question about the Manufactured Home Site Tenancy Agreements is if they are valid or not.

Policy Guideline # 27 says:

Licenses to Occupy

Section 2 of the RTA states the Act applies to tenancy agreements, rental units and other residential property. A tenancy agreement under the RTA includes a licence to occupy.
Section 2 of the MHPTA states the Act applies to tenancy agreements, manufactured home sites and manufactured home parks. A tenancy agreement under the MHPTA does not include a license to occupy.

Vacation or Travel Accommodation and Hotel Rooms

The RTA does not apply to vacation or travel accommodation being used for vacation or travel purposes. However, if it is rented under a tenancy agreement, e.g. a winter chalet rented for a fixed term of 6 months, the RTA applies.

Whether a tenancy agreement exists depends on the agreement. Some factors that may determine if there is a tenancy agreement are:

- Whether the agreement to rent the accommodation is for a term;
- Whether the occupant has exclusive possession of the hotel room;
- Whether the hotel room is the primary and permanent residence of the occupant.
- The length of occupancy.

Even if a hotel room is operated pursuant to the Hotel Keeper's Act, the occupant is charged the hotel room tax or the occupancy is charged a daily rate, a tenancy agreement may exist. A tenancy agreement may be written, or it may be oral.
A person occupying a room in a residential hotel may make an application for dispute resolution, without notice to any other party, requesting an interim order that the RTA applies to that living accommodation.

With regard to guideline #27, it does not apply directly to the MHPTA but does shed some light on the concept of Vacation or Travel Accommodation. The disputed tenancy agreements between the parties are annual term tenancies and the Applicant said the tenants have been in the park for 10 to 32 years. The Respondent says the term is seasonal occupancy from April to October with winter storage and therefore the Applicants do not have exclusive use of the sites in the winter months. The Applicant said he has had exclusive access to the site during winter months.

This policy guideline although targeted at the RTA does indicate vacation or travel accommodation may be considered a tenancy by the length of the term. The example is a ski Chalet with a six-month term is a tenancy agreement.

Given that the Applicant and the Respondent agree their sites are rented for six months and arguable for 12 months a year as the Applicants' units and belongings are on the site 12 months of the year, which in my mind indicates the Applicants have exclusive use of the property for 12 months per year. I find the first criteria from policy guideline #27 indicates a tenancy is in place.

With respect to Policy Guideline #9 **Tenancy Agreements and Licenses to Occupy**

This Guideline clarifies the factors that distinguish a tenancy agreement from a license to occupy. The definition of "tenancy agreement" in the Residential Tenancy Act includes a license to occupy. However, the Manufactured Home Park Tenancy Act does not contain a similar provision and does not apply to an occupation of land that under the common law would be considered a license to occupy.

A license 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 1

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.

Some of the factors 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**.

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.

Tenancies involving travel trailers and recreational vehicles

Although the Manufactured Home Park Tenancy Act defines manufactured homes in a way that might include recreational vehicles such as travel trailers, it is up to the party making an application under the Act to show that a tenancy agreement exists. In addition to any relevant considerations above, and although no one factor is determinative, 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.**

A landlord and tenant may enter into a tenancy agreement for rental of a manufactured home site upon which the tenant is entitled to bring a manufactured home. It is important to note that a binding tenancy agreement may exist even where there is no home on the site.

The criteria in Policy Guideline # 9 that are relevant to theses applications are as follows:

1. The parties agreed the Applicants have exclusive position of the sites from April to October and the Respondent required permission to enter the Applicants' homes. These are both criteria of a tenancy.

2. A fixed rental amount is charged annually although there are arrangements between the Respondent and some Applicants to pay rent monthly. This is the criteria of a tenancy.
3. The Respondent/Owner requires permission to enter the Applicants' units. This is the criteria of a tenancy.
4. The Respondent has issued a notice to vacate with reasons. This is the criteria of a tenancy.
5. The written Manufactured Home Site Tenancy Agreement has a clause "Vacation Renters" that says the Applicants are subject to the MHPTA. This is the criteria of a tenancy.
6. The Applicant testified these units are second homes and the Respondent said some of the Applicants only use the homes 2 to 3 weeks a year and all Applicants have permanent homes. The guideline's criteria says for residential use not recreational use. Given that the term of the agreement is for April to October. I find the use is residential in nature. This is the criteria of a tenancy agreement.
7. The Respondent submitted evidence that the property is zoned as a campground and RV park and not as a manufactured home park. I accept this but the Respondent operates the Park as a Manufactured Home Park as indicated in the Termination of License to Occupy issued to the Applicants on September 12, 2019. Given this I find the Respondent may have misrepresented his property to the Applicants and therefore I have given the zoning criteria little to no weight in my decision.
8. Rent is an annual fixed amount and there is no GST calculated on rent. This is the criteria of a tenancy.
9. The agreements include some utilities such as garbage, recycling and cable but the Applicants pay for electricity. This is the criteria of a tenancy.
10. I accept the Respondent's testimony that no services are provided in the winter including frost-free water. Two of the agreements include winterizing but this was not explained during the hearing.
11. There are no restrictions on visiting hours for the Applicants during the period of April to October. The Respondent said access is restricted in the winter months. The Applicant indicated he did renovations to his unit one winter and the Respondent did not take issue with this, so the Applicant felt that he has access to his unit in the winter months. This is the criteria of a tenancy.

Given that I found the Manufactured Home Site Tenancy Agreement between the parties starting on January 1, 2009 is binding on the Respondent and the history of the relationship between the parties as defined by Policy Guidelines 9 and 27 supports a tenancy agreement exists: I find this situation is a Manufactured Home Park Tenancy and is under the jurisdiction of the MHPTA. This ruling is final and binding on the parties.

The Respondent and his Counsel conceded that the Termination of License to Occupy dated September 12, 2019 issued to the Applicants does not comply with the section 45 (e) of the MHPTA. Section 45 (e) says a Notice to End Tenancy must be on the approved form. Consequently, I find for the Applicants and I cancel the Termination of License to Occupy as invalid and order the tenancies to continue as agreed in the Manufactured Home Site Tenancy Agreement which started on January 1, 2009.

Further, I order the Respondent to retract the daily vacation charges of $55.00 per day levied against the Applicants and reinstate the rental amounts previously paid by the Applicants.

Of note the Respondent is at leave to apply to the Residential Tenancy Branch under the MHPTA for annual rent increases, and if applicable a rent increase over the annual allowable rent increase pursuant to the Act and the regulations.

As the Applicants have been successful in this matter, I order each Applicant to reduce their next rent payment by $100.00. This is a one time rent reduction in order for the Applicants to recover the filing fees for these applications.

Conclusion

I find the agreements between the Applicants and Respondent are tenancy agreements and the Manufactured Home Park Tenancy Act has jurisdiction.

I order the Notices to Vacate or Terminations of License to Occupy dated September 12, 2019 are cancelled and the tenancies are ordered to continue as set out in the tenancy agreements.

Further I order the Respondent to comply with the Act, regulations and tenancy agreements and reinstate the rent amounts prior to November 1, 2019.

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: February 03, 2020

Residential Tenancy Branch