Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Creekside Campground and RV Park
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution file by the tenants under the *Manufactured Home Park Tenancy Act* (the "Act") for a monetary order for money owed, to have the landlord comply with the Act, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Preliminary issue

In this case, the first issue I must consider is whether the Act applies to this matter.

The advocate for the tenants submits the following on jurisdiction.

1. That the R.V meets the definition of a manufacture home as it has been used as a permanent residence of the tenants;
2. The tenants' have exclusive possession of the site;
3. The tenants pay a fixed amount of monthly rent and no GST is charged;
4. The services provided included frost-free water lines;
5. The tenants have installed permanent structures, which include a roof, deck , shed and canopy;
6. There are two different areas of the park, one for visitors and the other for long term residence;

7. The property is not zone for a manufacture home park; however, that does not change that a tenancy may exist;
8. The R.V. has never been moved and has been on site since September 2017;
9. That there has been an oral agreement since September 2017t;
10. The tenant pays their own Wi-Fi and cable, the landlord pays electricity, water, and septic;
11. There is no restriction on visiting hours;
12. No security deposit was paid; and
13. There is no family type relationship.

The landlord submits the following;

1. The R.V has its own wheels and can be moved by towing with another vehicle;
2. That the Policy Rules allows the access to the site;
3. GST is paid, and rent is charged monthly as this allows affordable monthly accommodations to the tenant;
4. Frost free water lines are not provided;
5. The structures were put up without the prior consent of landlord;
6. The tenants have moved three times since they have been in the campground, which was 2016 and not 2017; and
7. There is a signed monthly agreement, which gives the tenants the licence to occupy as the tenant has signed the monthly receipts.

The landlord testified that the tenant was also an employee of the campground and fully was aware of the rule guide and that this was a licence to occupy and that those rules apply to their site.

The landlord testified that the rent is $500.00 per month plus Gst, and the tenant knows this from their role as an employee and it clearly shows that Gst is collected on the full invoice, which has been signed by the tenants.

The tenant acknowledged they were a previous employee of the landlord; however, they did not receive a copy of the rule guideline and they were only agreeing to follow the posted rules for the campground site. After questioning the tenant on this issue, they stated that they were aware of the rule guide from their employment that is subject to their site.

The tenant testified that the water line is underground therefore frost-free; however, after questioning the tenant on this issue they stated that they must protect the water

tap by covering and insulate waterline to the trailer during the winter to protect from freezing.

The tenant testified that they do not remember what information they took when they accepted payments from other renters. The tenant stated that the computer figured out the balance. After questioning the tenant, they stated they do not recall.

The tenant testified that they were in the lower portion of the campground when they first moved in an were waiting for a spot in the upper section to become available, which site 8 became available on October 31, 2016 and then later they request to move to a more private site, which they did in September 2017.

The tenant argued that the issues of the structures to whether they had prior consent to add the structures on the site is not relevant. I directed the tenant to answer the question, which they responded they were given prior consent. This was denied by the landlord.

Analysis

Tenancy agreement is defined in the Act, as an agreement, whether written or oral, express, or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities.

Under a licence to occupy, a person is given permission to use a rental unit or site, but that permission may be revoked at any time. The Branch does not have the authority under the MHPTA to determine disputes regarding licences to occupy.

It is up to the party making an application under the MHPTA to show that a tenancy agreement exists. To determine whether a tenancy or licence to occupy exists, an arbitrator will consider what the parties intended, and all the circumstances surrounding the occupation of the rental unit or site.

I have read the Supreme Court decision of Steeves vs Oak Bay Marine Ltd, submitted by the tenants' advocate, they did not provide a copy of the entire decision for my review only a very small portion was provided. I have reviewed the full decision, I find that decision is based on other facts, as this decision was based on ending the tenancy agreements that were under the Manufacture Home Park Act. These tenancy agreements were signed, and which required the tenants to provide at least one month notice to end tenancy.

The decision also stated the following that related to R.V's in a campground, which is the case before me.

> 112] The MHPTA is not intended to regulate seasonal campgrounds that are utilized **not by large manufactured homes** that require significant effort to move from place to place but by wheeled vehicles intended and used as temporary accommodation and licensed to be moved on their own power or towed behind other vehicles. **That such RVs can and occasionally are used as longer-term housing is evidenced by some of the homes in the Pedder Bay Park. That use in and of itself does not change the character or purpose of the MHPTA.** .
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> [My Emphasis added.]

In this case, I accept that the R.V is designed and intended for recreational use the residential use. This is not a large manufacture home that will require any significant effort to move, which it has been moved on three occasion by being towed behind another vehicle.

I accept that this has been use by the tenants as their primary residence. While the facts of this case are different from the BC court appeal decision referred to above; However, I agree with the above finding that the use of an RV for longer-term housing, use does not change the intent or purpose of the Manufacture Home Park Act. The passage of time does not change the term of the original agreement.
I have reviewed Policy Guideline #9, which states

> **features of permanence may include**: • The home is hooked up to services and facilities meant for permanent housing, e.g. frost-free water connections; • The tenant has added permanent features such as a deck, carport or skirting which the landlord has explicitly or implicitly permitted; • The tenant lives in the home year-round; • The home has not been moved for a long time.
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> **Feature of a licence to occupy may include** - rent is charged at a daily or weekly rate, rather than a monthly rate and tax (GST) is paid on the rent; • the parties have agreed that the occupier may be evicted without a reason, or may vacate without notice; • the agreement has not been in place for very long; • the property owner pays utilities and services like electricity and wi-fi; and • there are restricted visiting hours.

Based on the PG#9, I make the following finding that relate to permanence.

I find the tenants do not have frost free lines, which would be expected if the intend was meant for permanent housing. At the hearing the tenant was very reluctant to describe what they must do to protect those water lines during the winter, and it was only after I asked direct questioning that it was determined they are not frost-free water lines as the tenants confirmed that they must cover the water tap, and insulate the lines to protect them from freezing. I find this was an attempt to provide misleading evidence.

I prefer the testimony of the landlord over the tenant that the tenants did not have prior permission to erect structures. I find it unreasonable for the tenant to respond that is not relevant, this leads me to believe the tenants did not have the consent of the landlord. It was only after I told the tenant that it is relevant, and they must answer the question that they said they had prior consent. This action of the tenant leads me to believe the tenant is not being truthful.

In addition the photograph do not support these are permanent structures, the decking is not attached to anything it is simply a structure of wood that is on the ground and can be easily removed, the roofing appears to be a simple “A” frame construction which appears to be covered in a type of plastic, and can be easily removed and the canopy looks like it has small posts covered in plastic and appears to be unstable. I note the canopy is not shown in the photograph with the decking. I do not accept these are permanent structures they are by nature appear to be made to be temporary. There are no permanent structures, such as a carport or skirting. While there is a shed, a shed is not a permanent structure and can be removed.

While I accept the tenants are living on the premise year-round, that does not change the intent of the Act.

Based on the PG#9, I make the following finding that relate to a licence to occupy.

Rent is charged on a monthly basis, this alone does not create a tenancy under the Act, as parties are entitled to negotiate weekly, daily, or even a monthly rate. Monthly rent is only for the benefit of the tenant receiving a lower rent, which is not unreasonable.

I accept the evidence of the landlord that the tenants pay GST on the site rental. I find the tenant was not credible on this issue. While I accept the copy of the receipt the tenants provided as evidence does not show the break down, that is because it is calculated in the full invoice, which the landlord provided a copy and it is signed by the

tenant. Further, the tenant had to have known GST was charged, as they were an employee of the landlord and the tenant statement that they do not recall is simply a way to misrepresent the evidence before me.

Further, I am satisfied that there is no requirement for either party to give notice to end the tenancy. The rule guideline filed in evidence by the landlord show that either party can end the licence to occupy at any time, although it is suggested that some notice would be appreciated for either party.

While the evidence of the tenant was that they were only agreeing to comply with all the campground rules and regulations as posted as shown in the receipt; I am satisfied that the tenant was fully aware of the rule guide pertaining to their site, as they were an employee of the landlord and admit they were aware of the rule guide at the hearing. Rule Guide #1 confirms this is a licence to occupy.

Furthermore, while I accept the tenants have lived within the campground for a period of time, however, they have moved their R.V. three times to different sites. This does not support this tenancy is of a very long period or meant to be permanent, and even if it was the passage of time does not change the original agreement.

Furthermore, the landlord pays for utilities such as water, electricity, and sewer disposal, which would not be the case if this was a manufacture home site as the tenants are responsible to pay for their own service.

In light of the above, I find the tenants have not established that a tenancy exists. I find the tenants have a licence to occupy with can be revoked at any time. I find the tenants were not entitled to make an application for any remedies under the Act. Therefore, I dismiss the tenants' application without leave to reapply.

Conclusion

The tenants' do not have a tenancy agreement under the Act. The tenants have a licence to occupy. Therefore, the tenants' application is dismissed.

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: June 26, 2020

Residential Tenancy Branch