Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Malahat Meadows Holdings Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI FFT

Introduction

This hearing dealt with an application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 36; and
- authorization to recover the filing fee for this application, pursuant to section 65.

SV, the new owner of the property, attended the hearing along the previous owners JE and KE. Both parties attended the hearing and were given a full opportunity to be heard, to. The previous owners confirmed receipt of the tenant's application for dispute resolution hearing package ("Applications"). In accordance with section 83 of the *Act*, I find that the previous owners duly served with the tenant's application. The new owner of the property confirmed that he received all the hearing documents from the previous owners, and had no issue with proceeding with the scheduled hearing. As the tenant confirmed receipt of the respondents' evidentiary materials, I find that these were duly served in accordance with section 81 of the *Act*.

Preliminary Issue-Jurisdiction

At the beginning of the hearing the respondents in this application stated that this matter does not fall under the jurisdiction of the Residential Tenancy Branch as the applicant entered into a "license to occupy" agreement to occupy the campground, and not a tenancy under the *MHPTA*.

The applicant testified that she had been residing at this site since October 1, 2016. The applicant testified that under the definition of the Act, and in consideration of Residential Policy Guideline #9, a tenancy does exist. The applicant testified that she originally resided in a 25 foot motor home on the site, and in March of 2020 she had upgraded to

a 35 foot 5th Wheeler on the same site. Both parties confirmed that no written tenancy agreement exists.

The applicant testified that she originally moved onto the property on a temporary basis on September 23, 2016, and had made the site her permanent home since October 2016. The applicant testified that monthly rent was set at $656.25 per month, payable on or before the first of every month. The property was sold, and the new owner SS took possession on August 19, 2020. The applicant was assessed a rent increase as of September 1, 2020, and paid the new owner $761.25. The applicant testified that the new owner served her with a 10 Day Notice to End Tenancy for Unpaid Rent, and therefore felt she had no choice but to pay the increased amount. The applicant filed this application to dispute a rent increase imposed by the previous owners, as well as the latest rent increase imposed by the current owner.

The applicant testified that she has been living on this site for almost four years, and this is her permanent and full-time address, as supported by the address on her driver's license. The applicant testified that she had recently upgraded her home to the bigger 5th wheeler, and has added a deck, landscaping, and a garden to her home. The applicant testified that her daughter goes to school in the local district, and that this arrangement was an affordable option for her family. The applicant testified the site owners do pay for the water and hydro, she considers these as included utilities as part of her monthly rent. The applicant does not dispute that she had willingly paid the seasonal increases requested by the previous owners, but that this was done in fear of possible eviction by the owners as the previous policy guideline was vague in defining whether the tenancy fell under the jurisdiction of the *MHPTA*.

The new and previous owners of the property testified that the applicant resides on a campground, and not a manufactured home site. The previous owners testified that they had owned the property for almost 42 years, and have always operated the site as a campground. The respondents testified that they pay for electricity, wi-fi, and amenities, and that they had only recently allowed longer term stays due to the pandemic.

The new owner testified that the property was zoned as campground, and that although two residents were permanent residents on the property, the applicant resided in a recreational vehicle, which was replaced with another recreational vehicle, and which should not be considered a permanent home. The owners confirmed that there were approximately 7 to 8 campsites on the property, and they had the right to assess the users fees which fluctuated on a seasonal basis, plus taxes, as part of operating the campground.

Analysis: Jurisdiction

The definitions of “manufactured home”, “manufactured home park”, “manufactured home site”, and “tenancy agreement” are outlined in the following terms in section 1 of the *Act*:

> **"manufactured home"** means a structure, whether or not ordinarily equipped with wheels, that is
>
> > (a) designed, constructed or manufactured to be moved from one place to another by being towed or carried, and
> >
> > (b) used or intended to be used as living accommodation;
>
> **"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 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.

What this Act applies to

> **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.

Both parties gave evidence that there was an oral agreement for the applicant to park her original 25 foot motor home on the respondents’ property in exchange for a monthly payment. Although no signed agreement exists, and no security deposit was ever paid, both parties entered into an agreement pertaining to the applicant’s right to park and reside in her motor home on the respondents’ property in exchange for money. The respondents refer to the site as a campground, which the property is currently zoned as.

RTB Policy Guideline 9, as updated in May of 2020, clarifies the factors that distinguish a tenancy agreement from a license to occupy. The Policy Guideline was updated in May of 2020 to address disputes such as the applicant’s, where the applicant is residing

in a structure that may or may not be equipped with wheels such as a recreational vehicle, but uses the vehicle or structure as permanent living accommodation.

Policy Guideline #9 cites caselaw, specifically *Steeves v. Oak Bay Marina Ltd.,* 2008 BCSC 1371, a BC Supreme Court decision, which states the following about permanence and how this factor plays into whether a tenancy exists or not.

"The MHPTA is intended to provide regulation to tenants who occupy the park with the intention of using the site as a place for a primary residence and not for short-term vacation or recreational use where the nature of the stay is transitory and has no features of permanence."

The Policy Guideline also addressed the issue of whether wheeled vehicles may still be considered permanent homes if occupied for long periods of time:

"RV parks or campgrounds

In Steeves, the Court set out that while the MHPTA is not intended to apply to seasonal campgrounds occupied by wheeled vehicles used as temporary accommodation, there are situations where an RV may be a permanent home if it is occupied for "long, continuous periods." See also: D. & A. Investments Inc. v. Hawley, 2008 BCSC 937. As a result, if the home is a permanent primary residence then the MHPTA may apply even if the home is in an RV park or campground."

Lastly, Policy Guideline #9 addresses the issue of zoning:

"PROPERTY ZONING

In Powell v. British Columbia (Residential Tenancy Branch), 2016 BCSC 1835, the Court held that municipal zoning may be relevant in that could inform the nature of the legal relationship between an owner and occupier. While zoning may inform this question, it is the actual use and nature of the agreement between the owner and occupier that determines whether there is a tenancy agreement or licence to occupy.

The fact that the landlord is not in compliance with local bylaws does not invalidate a tenancy agreement. An arbitrator may find that a tenancy agreement exists under the MHPTA, even if the property the rental pad is on is not zoned for use as a manufactured home park. As the Court pointed out in Wiebe v Olsen, 2019 BCSC 1740, "there is no statutory requirement that a landlord's property meet zoning requirements of a manufactured home park in order to fall within the purview of the MHPTA."

I have considered sections 1 and 2 of the *MHPTA* as well as Policy Guideline #9 in making my decision in regards to jurisdiction. As the applicant has utilized both the 25 foot motor home and the 35 feet 5th wheeler as permanent living accommodation since September 2016, regardless of whether the accommodation is a recreational vehicle and has the ability to move or not, I find that both structures meet the definition of a Manufactured Home under the *MHPTA*. As it is undisputed that a monthly payment was made in exchange for the ability to park the applicant's home on a designated portion of the respondents' land, I find that the property falls under the definition of a Manufactured Home Park under the *MHPTA.* A tenancy agreement may be oral, or even implied, and does not require a security deposit to be valid. In fact, security deposits are not allowed for tenancies under the *MHPTA*. I find that an oral agreement was entered into by both parties in 2016.

I find that the applicant resided on the site since 2016 as her permanent home, in exchange for monthly payment of rent to the respondents. As stated above, although zoning may be of relevance, the actual use of the site and nature of agreement between the parties, supports a tenancy under the *MHPTA*. As stated in Policy Guideline #9, no single factor is determinative.

Although the applicant did admit to paying the previous seasonal increases imposed by the owners, the tenant provided a valid and reasonable explanation for doing so. I find that her continued acceptance of these increases do not imply her acceptance of the respondent's assertion that the matter does not fall under the jurisdiction of the *MHPTA*. I find that the applicant raised a valid concern that before the Policy Guideline was updated in May 2020, the applicant was fearful that although she had been living on the site as her permanent residence, in light of the fact that no written agreement exists and that she resided in what could be considered a recreational vehicle on a site zoned as a campground, the respondents would argue that the tenancy did not fall under the *MHPTA* in an attempt to avoid the *Act,* rendering her homeless. The applicant preferred to pay the rent increase in an attempt to avoid eviction.

Based on the evidence before me, I find that the relationship between both parties is a tenancy, and this dispute falls within the jurisdiction of the *MHPTA.*

Issues

Is the tenant entitled to a determination regarding their dispute of an additional rent increase by the landlords?

Is the tenant entitled to recover the cost of the filing fee from the landlord for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

The tenant's application pertains to two rent increases issued during this tenancy. The first rent increase was imposed as a seasonal increase effective June 2020, which the tenant did not pay. The landlords advised the tenant of the rent increase by email on June 28, 2020 that the site rental would increase to $1,102.50. The tenant submitted a copy of this email in her evidentiary materials.

The tenant was issued a rent increase effective September 1, 2020 by the new owner by email on August 30, 2020, increasing the monthly site rental from $656.25 to $761.25, which was paid by the tenant. The tenant submitted a copy of this email in her evidentiary materials.

The tenant is disputing both rent increases as they were not imposed in accordance with the *Act* and legislation. The landlords argued that they retained the right to impose the rent increases as this matter did not fall under the jurisdiction of the *MHPTA.*

Analysis

Section 35 of the *Act* stipulates that a notice of rent increase must be provided 3 months in advance of the increase and be in the approved form, available on the RTB website; a verbal or written demand does not comply with this requirement. Furthermore, the Ministerial Order dated June 24, 2020 prohibits rent increases issued between June 24, 2020 up to July 29, 2020. The updated Ministerial Order dated July 30, 2020 states that any notices of rent increases do not take effect until November 30, 2020. The Order states that if a landlord collects a rent increase that does not comply with this section, the tenant may deduct the increase from rent or otherwise recover the increase.

Both parties may refer to the following link for the specific orders:

https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/covid-19

I find that the landlords have failed to impose rent increases in accordance with the *Act* and legislation. Therefore, I order that monthly rent be set at $656.25.

I also allow the tenant to recover the filing fee for this application.

I order that the additional rent paid by the tenant for September 2020 be returned to the tenant. I allow the tenant to recover the $105.00 plus the $100.00 filing fee paid for this application by reducing a future monthly rent payment by this amount.

Conclusion

I find that this matter falls under the jurisdiction of the *MHPTA.*

I find that the landlords have failed to impose rent increases in accordance with the *Act* and legislation. Therefore, I order that monthly rent be set at $656.25.

I also allow the tenant to recover the filing fee for this application.

I order that the additional rent paid by the tenant for September 2020 be returned to the tenant. I allow the tenant to recover the $105.00 plus the $100.00 filing fee paid for this application by reducing a future monthly rent payment by this amount.

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: September 11, 2020

Residential Tenancy Branch