



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0827155 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M OLC

Introduction

This hearing was convened as a result of the applicant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* however, as jurisdiction was raised, I find the appropriate Act is the *Manufactured Home Park Tenancy Act* (Act) or MHPTA in some references. The applicant requested to cancel a 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit and for an order directing the landlord to comply with the Act.

On February 22, 2021, the hearing commenced and attending the teleconference hearing was the applicant and agent for the numbered company landlord, SD (agent). The parties were affirmed and at the outset of the hearing, it became apparent that the parties may not have a landlord/tenant relationship. As a result, the parties were advised that I would be first determining jurisdiction, specifically, whether the Act applies to the living arrangement. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary Issue – Jurisdiction

The Act and my authority to resolve disputes applies to tenancy agreements between a landlord and tenant respecting the use and occupation of a rental unit and residential property. Below, I have summarized the respective positions concerning jurisdiction from the parties.

Both parties confirmed that there was no written tenancy agreement between the parties. The name of the property at issue is the Pathfinder Motel/RV Park according to the respondent's documentary evidence.

Applicant's evidence

The applicant states they have occupied their site since April 18, 2015. The applicant states that power, water, septic and wifi are provided in the monthly payment; however, the applicant does not use the wifi as they have their own dedicated internet provider.

The applicant referred to Residential Tenancy Branch (RTB) Policy Guideline (policy guideline) 9, which is entitled “Tenancy Agreements and Licenses to Occupy” (Policy Guideline 9). The applicant is of the position that he is a tenant and that the living situation should be considered a tenancy under the Act and that if the Act does apply, the applicant should be entitled to a 12 month notice and compensation under the Act, accordingly.

The applicant states they pay monthly rent of \$600.00 and that a security deposit was never requested. The applicant also stated that guests are not required to register at the front office, there is no tax paid on the monthly rent, and that the applicant has lived in their RV, a motorhome described by the applicant as 35 years old, for the past 12 years, and since April 2015 on the current site named on the style of cause.

The applicant stated that he has not moved his RV since 2015 although it is self-powered and has four wheels. The applicant described the RV as having soft-skirting, a fully deployed awning, and what the applicant described was a partially enclosed living area, with two utility trailers acting as a shed and workshop. The applicant describes their motorhome as a “potentially-self-towing tiny home”.

The applicant also writes in part, the following:

...My motorhome is blocked up, soft skirted, contains modified external and internal wiring to accommodate the two separate 15A circuits available for my site, and has multiple semi-permanent attachments like cameras, pole mounts for wind chimes, overhead wiring, and so on around the outside walls...

...I have built full-time, all-season, reinforcement into my awning over a large wooden deck used for outdoor storage and hobby space...”

The applicant claims that their motorhome meets the definition of manufactured home under Policy Guideline 9, which reads in part:

Features of permanence may include:

- The tenant lives in the home year-round;
- The home has not been moved for a long time.

The applicant submitted many colour photos, which I will describe briefly below:

Photo 1 – Shows an RV with an awning deployed and small wooden deck that is not attached to the RV, with a red box on the deck and a garbage can with a broom and other items in the can. There is a ladder leaning against the RV and a bike behind the RV. There is no visible soft skirting as described by the applicant.

Photo 2 – Shows the same RV with wheels exposed, snow and icicles on the RV and surrounding the RV.

Photo 3 – Shows the same RV with wheels exposed, and icicles hanging off the RV with 2 makeshift blinds hanging from the awning and a ladder in the snow.

Photo 4 – Shows the same RV with wheels and the lower front end covered in a soft, bendable material that appears to be carpet.

Photo 5 – Shows the same RV with a focus underneath the awning, where a barbeque top is showing, and venetian blinds attached with chains to the awning. There is staining on the awning and it is sagging and there are pieces of wood leaning against the RV and what appears to be a small plastic shed that is not attached to the RV.

Photo 6 – Shows the same RV with the wheels and front of the RV covered in a soft, bendable material that appears to be carpet. There are several binds underneath the awning and two makeshift blinds hanging from the front area of the awning.

Photo 7 – Shows the same RV with the wheels and front of the RV covered in a soft, bendable material that appears to be carpet. There is a different wet blind hanging from a tarp, and the tarp is hanging over the awning.

Photo 8 – Shows the same RV with only the front of the RV covered with soft skirting and the remainder of the left side and rear of the RV uncovered showing the wheels. There is a utility trailer that the applicant states they use as a shed/workshop. There is a small plastic shed that is not attached to the RV with a wheelbarrow leaning against the plastic shed.

Photo 9 – Shows a different angle than photo 8, with the utility trailer open at the back. There are some bins and a garbage bin behind the utility trailer. There is a power cord hanging from the RV over to the utility trailer.

Photo 10 – Is a close-up photo taken underneath the RV which a cement block with a jack-stand and a jack on top of a board, which is on top of the cement block.

Photo 11 - Shows the left side of RV with the rear wheels exposed and no skirting showing with the exception of the front of the RV and the front left wheel. There is a log propped up with other logs and a hose reel with some boards below them.

Photo 12 – Shows the left side of the RV taken from the roof of the RV, and shows logs supported by other logs and attached to a tree, and some boards moss-covered boards close to the electrical connection. There are two portable propane tanks shown in the photo also.

Photo 13 – Shows the same RV with a pet cage acting as a makeshift window box or screen, which is screwed into the side of the RV with shelf supports.

Photo 14 – Shows a different angle of the front of the same RV with the front of the RV covered with the same soft skirting described above.

Photo 15 – Shows a different angle but similar to photo 14.

Photo 16 – Shows a close-up of the plastic shed, which is strapped to a utility trailer.

Photo 17 – Shows a close-up of the utility trailer that the tenant has covered, and states it is used as their shed/workshop.

Photo 18 – Shows a lot of junk, including various cuttings of woods, bottles, an old ring washer that the tenant described as an antique, garbage bins and is overall a cluttered area.

Photo 19 – Similar photo to photo 18, with junk such as a piece of a fan, miscellaneous boards, plastic bags. It shows a cluttered area under the awning.

Photo 20 – Shows a cluttered area with bike parts, tipped over bins, and a computer monitor outside, along with bungy cords holding up a tarp over the awning.

Photo 21 – Shows cords dangling from the awning area with much clutter.

Photo 22 – Shows the same as photo 21 from the opposite direction.

Photo 23 – Shows a blanket covered with receipts from the Pathfinder Motel/RV Park.

Photo 24 – Shows the inside of the RV, many dangling cords and extension cords and wires.

Photo 25 – Shows another view of the inside of the RV with many bins and electronics.

Photo 26 – Shows another view of the insider of the RV with what appears to be two monitors and a tablet, with many electronic devices on a desk in what clearly is an electronics work area.

Photo 27 – Photo of a different RV, which shows a fifth wheel and a metal roof over the fifth wheel. There is no context for the photo in the applicant's letter referred to in evidence and this photo was not referred to during the hearing by the applicant.

Photo 28 – A photo from Google Earth dated 7/29/2017 with no other context on the photo.

The applicant also cited *Wiebe v Olsen*, 2019 BCSC 1740 (*Wiebe* decision) in terms of property zoning, which states in part:

“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.” ...

The applicant confirmed that they were not aware if their water line had a frost-free connection and there was no evidence presented to support that there was during the hearing. In addition, the applicant stated that there are no visiting hours.

The applicant also mentioned that they have health issues including Chronic Fatigue Immune Deficiency Syndrome, CFIDS or CFS for short, which impacts the applicant's ability to accomplish physical and mental tasks, particularly if under stressful situations.

Respondent's evidence

The respondent writes the following:

Pathfinder Motel/RV Park is a legal non-conforming use within the Agricultural Land Reserve subject to Agricultural Land commission (ALC) regulations.

The Property was purchased in 2020 and we immediately gave 120-day notice to all customers to facilitate upgrading the property to meet code and today's standards as well as to meet local by-laws requirements.

[The applicant] is the last remaining customer. We worked with all the other customers to help them to move on to their new locations, including offering an average of \$3,000 per campsite to help with expenses.

We do not have any ability to permit [the applicant] or any other customer stay on site long term, see attached letter from the District of Kent.

Notice was given as it is our intent to fully comply and operate under local zoning which is allowed for under Tourism Recreational Commercial zoning (CS3).

Additionally, the decision was made after evaluating all services on site that we would have to replace all services to bring them up to code.

It is our position that [the applicant's] rights fall under a License to Occupy and that [the applicant's] unit is a class "A" Recreational vehicle that was built to be mobile.

[The applicant's] RV is mobile, any modifications he has made do not restrict his ability to move his RV.

[The applicant] pays a site fee which includes use of his campsite, power, water, sewer, wi-fi. [The applicant] does not get an assessment from the BC assessment authority.

As soon as the Property reopens to tourism customers (March 1, 2021) new rules will be put in place for all customers which will include:

- Maximum stays policies.
- Maximum allowable cars/trailers allowed on each campsite.
- What can be stored outside (i.e., only outdoor patio furniture and a BBQ).
- Visitor hours.

All rules are based on the property being a tourism operation, fees will also change to daily rates with GST charged.

As a new owner of the property, we have improved the site to make it safe and enjoyable for everyone. We have invested in this property and the work can not be completed and we can not follow District of Kent by-laws with out [the applicant] leaving the property.

We believe we have been more than accommodating to [the applicant].

[Reproduced as written, except for anonymizing name of applicant]

The respondent also stated that there is nothing preventing the RV from being moved and that the RV has a motor and 4 wheels and no permanent skirting or decking around the RV.

The respondent reminded the applicant during the hearing that wifi is included in the monthly site fee and that the decision of the applicant to arrange for their own wifi was a decision the applicant made.

In the letter from the District of Kent dated February 9, 2021, the Director of Development Services, LB, writes in part:

...The front portion of the property is zoned Tourist Recreation Commercial (CS3) which permits the campground and cabin use. The District's zoning bylaw defines a campground as follows:

Campground use means the provision of space for tents, or recreational vehicles intended to be occupied primarily by the travelling public for overnight accommodation, may include accessory dining, washroom and laundry facility and an office for guest registration.

For your benefit, a copy of the District's Campground Bylaw (No. 1001) is enclosed with this letter. The definition for campground in this bylaw is defined as follows:

Campground means any lot or parcel consisting of 2 or more campsites operated and occupied for part of the year only as temporary accommodation for holiday makers in **recreational vehicles**, or tenants, which is either operated for remuneration or is licenced accommodation under the regulations made pursuant to the Travel Regulation Act of the Province of British Columbia; does not include a **holiday park, mobile home park** or hotel, resort or a camp licenced under the Community Care Facility Act of the Province of British Columbia.

Under the General Provisions of this bylaw 3:03(2) states that the storage of **recreational vehicles**, or other means of recreational accommodation beyond ninety (90) days at any **camping site** shall be prohibited.

Again, we do appreciate the extensive remediation work that has taken place on site, but of concern to the District is the continued 'long-term' tenancy of some of the campsites and cabins. The District is requesting that you bring the camping site use into compliance by not allowing the sites to be rented long-term.

To avoid bylaw enforcement action, including penalties of up to \$250. per day, please rectify the non-permitted long-term use of all applicable campsites and cabins within 30 days of receipt of this letter...

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

I have carefully considered the documentary evidence before me, the citations made by the applicant, and the testimony before me. I agree that while there are similarities to both a landlord and tenant relationship and a licensor and licensee relationship, that on the whole, having considered all of the evidence before in its totality, I find that the Act does not apply to this living situation, and that it more closely resembles a licensor and licensee relationship.

In reaching this decision, I have applied significant weight to the photographic evidence, which I find clearly supports that the motorhome has four wheels and that in many of the

photos shows no soft skirting as claimed by the applicant, and only front soft-skirting resembling carpet in other photos of just the front wheels and front of the motorhome and that no skirting is around the middle, rear wheels and back of the motorhome in any of the photos. I also find there is no permanent hard skirting attached to the motorhome in any of the photos and that there is no decking attached to the motorhome in any of the photos.

In addition, I find that the wooden deck is not large as claimed by the applicant and it is not attached to the motorhome. In fact, I find that all of the items and additions are makeshift, are non-permanent in nature, and could be easily moved. This includes the jack-stand and cement blocks that appear to be rated for a small car based on the photographic evidence and not permanent in nature. In other words, the fact that the space is cluttered in many photos, does not make it permanent. While the tenant may be suffering from health issues, the Act does not provide any exemptions related to health issues.

I have also considered that the applicant was unsure if the water lines are frost-free, and I find there is insufficient evidence before me that the water lines are frost-free as a result. Furthermore, I find the utility trailers, which the applicant says are used as a shed and a workshop, can both be easily removed and towed and are in no way permanent in nature as they are both attached to small trailers that have tow hitches. In addition, I find both the inside and outside wiring, which includes hanging power cords and various extensions cords to be temporary in nature. Also, I find the awning not to be permanent in nature whatsoever and is comprised of added tarps and bungee cords.

Under the MHPTA, a manufactured home is defined as a structure, other than a float home, whether or not ordinarily equipped with wheels, that is

- designed, constructed or manufactured to be moved from one place to another by being towed or carried, and
- used or intended to be used as living accommodation.

I find that the motorhome in the matter before me is not designed to be towed or carried, and that it is a self-powered recreational vehicle (RV), with four wheels and its own engine. I agree with the respondent that the motorhome is designed to be a mobile, and there does not meet the definition of a manufactured home. Furthermore, the MHPTA does not include a license to occupy.

While I accept that the applicant has made their motorhome their primary residence, pays a monthly amount for the site, and has lived on the site since 2015, I find the

temporary and non-permanent nature of the evidence before me outweighs the length of time they have resided at the site, how they pay what I find to be a monthly site fee, and that the applicant is using the motorhome as their primary residence.

In addition to the above, I note the applicant was not renting a cabin on the property, and was paying a monthly site fee, and that the zoning for the area of the site is designated as a campground. I afford limited weight to the zoning of the Motel/RV Park, as I have also considered the *Wiebe* decision as *Wiebe v Olsen*, 2019 BCSC 1740, states “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.”

In summary, I find the applicant has provided insufficient and contradictory evidence to support that a tenancy exists, and as a result, I prefer the evidence of the respondent and I find that this matter relates to a license to occupy. Pursuant to section Policy Guideline 9, and 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 RTB does not have the authority under the MHPTA to determine disputes regarding licences to occupy. Given the above, I decline to hear this dispute due to lack of jurisdiction.

Conclusion

I decline to hear this dispute due to lack of jurisdiction as this living arrangement relates to a license to occupy.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 26, 2021

Residential Tenancy Branch