Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing dealt with four applications, one from each applicant, brought pursuant to the *Manufactured Home Park Tenancy Act* (the "**Act**") for:

- an order that the landlord comply with the Act, regulation or tenancy agreement pursuant to section 58;
- authorization to recover the filing fee for this application from the landlord pursuant to section 65.

Tenants LM, RK, and TT attended the hearing. They were represented by an advocate ("**KC**"). The landlord was represented by counsel ("**PD**"), its owner ("**JR**") and an agent of the purchaser of the property in question ("**RW**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. By consent of all parties, two of the tenants' witness attended the hearing for its entire duration ("**DR**" and "**CT**").

Preliminary Issue – Withdrawal of Tenant PL

At the outset of the hearing, KC advised me that the tenant PL has withdrawn his application and would not be appearing. PD confirmed this. As such, I dismiss his application. KC also advised me that PL's surname was misspelled on his application, and it includes a "v" in place of a "g". As PL has withdrawn his application, there is no need for me to order that it be amended to correct the spelling.

Preliminary Issue – Name of Tenant RK

Tenant RK is improperly named on the application. The surname used on the application is that of his common-law wife, who lives with him. His last name also starts with the letter “K”. As such, I will continue to identify him as “RK” but will amend the application to substitute his correct surname for his wife’s surname (correct surname listed on the cover of this decision).

Preliminary Issue – Service of Documents

The parties confirmed that each had received the other’s evidence package within the required time frame. PD confirmed that the landlord received the tenants’ applications in accordance with the Act.

PD also served the tenants with a copy of his written submissions in advance of the hearing. He did not provide the Residential Tenancy Branch (the “**RTB**”) with these prior to the hearing, but with my leave, he uploaded a copy of them to the RTB evidence portal during the hearing, which I have relied on when preparing this decision.

Preliminary Issue – Nature of Claim and Use of Defined Terms

While the tenants’ applications are for an order that the landlord comply with the Act, their claims are better characterized as ones seeking a determination as to whether the Act applies to the contractual relationship between each applicant and the respondent.

I also note that throughout this decision I will use the defined terms of “landlord”, “tenant”, “manufactured home”, “manufactured home park”, and “manufactured home site”. The parties used these terms throughout the hearing. I do not assign any significance this. I understood them to be used in their colloquial sense, and not as a concession on any point of law. My use of them in this decision similarly should not be

understood to imply that I have found the Act to apply, rather I use them in the interest of readability of the decision.

Issues to be Decided

Does the *Manufactured Home Park Tenancy Act* apply to the contractual relationship between the applicants and the respondent?

Are the tenants entitled to the return of their filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

1. The Property and its Administration

The landlord is BC numbered company, wholly owned by JR. The landlord owns the property upon which the tenants reside. The property is a little over 1 acre in size and is comprised of a marina and dock at which boats are moored, campsites for RVs, and cabins. The landlord generates income from renting all of these out to the public. During the hearing, the parties referred to this property as the "property", the "marina", and the "park" interchangeably. The numbered company does business as "S Marina" (full name redacted). All of the tenants reside in recreational vehicles ("RVs") parked on campsites.

The property is not zoned as a manufactured home park. Rather, it is zoned as "Tourist Commercial", and, per the municipal bylaws, is to be used for the follow purposes only:

1) motel;
2) lodge;

3) campground;
4) restaurant;
5) marina;
6) bed and breakfast inn;
7) auxiliary uses including retail outlet, dry cleaning delivery service and laundry facilities for the use of guests, hair dressing salon, open air recreation use, and pub;
8) one dwelling unit or single-family dwelling per parcel

The property is a single lot, that is not subdivided.

When the landlord purchased the property, JR took a hands-off approach to administering it. Since purchasing it, he testified he visited it “six or eight times” total. An agent who lived on the property administered it for the landlord, collected rents from people renting camp sites, dock space, & cabins, performed maintenance, secured new renters, and dealt with the occupants. In 2015, this agent passed away. DR, who had recently moved into one of the cabins on the property, assumed the responsibilities to maintain the park at JR’s request. DR was not paid for this work, but instead was allowed to live in the cabin rent-free. JR’s hands-off administration of the daily workings of the park continued with DR as manager.

On May 7, 2015, JR, in his capacity as owner of the landlord, provided DR with the following letter:

> I, [JR], hereby appoint you as the manager of [the Marina] effective May 2015. I authorize you to act in all matters necessary with regards to the Marina.
>
> Welcome to [the Marina] and I look forward to working with you.

I will return to the scope of DR’s authority later.

2. The Tenancies

The tenants moved into the park at different times.

TT moved into the park in 2013. Since then, he has lived in the park exclusively, occupying the same site continuously, living in a “fifth-wheel”-style RV, which he owns. He pays the landlord (via cheques to the park manager) $380 per month, which includes all utilities (water, hydro, and sewage). He has constructed a deck, carport, enclosed workshop, and an outdoor covered work area next to his RV. He testified that he has exclusive use of the site. He did not sign a tenancy agreement or any other documentation relating to his tenancy. He did not pay a security deposit. The agreement was made verbally between himself and the prior manager of the park.

TT’s RV is not registered as a manufactured home in the BC manufactured home registry.

LM moved into the park in 2015. Since then, he has lived in the park exclusively, occupying the same site continuously, living in a “motorhome”-style RV, which he owns. He pays the landlord (via cheques to the park manager) $400 per month, which includes all utilities (water, hydro, and sewage). He has constructed a large deck which wraps around the rear of his RV. He testified that he has exclusive use of the site. He did not sign a tenancy agreement or any other documentation relating to his tenancy. He did not pay a security deposit. The agreement was made verbally between himself and DR.

LM’s RV is not registered as a manufactured home in the BC manufactured home registry.

RK moved into the park in late 2019. Since then, he has lived in the park exclusively, occupying the same site continuously, living in a “fifth-wheel”-style RV, which he owns. He pays the landlord (via cheques to the park manager) $325 per month, which includes all utilities (water, hydro, and sewage). He has constructed a deck, enclosed steam bath, and outdoor kitchen next to his RV. He testified that he has exclusive use of the site. He did not sign a tenancy agreement or any other documentation relating to his tenancy. He did not pay a security deposit. The agreement was made verbally between himself and DR.

RK’s RV is not registered as a manufactured home in the BC manufactured home registry.

None of the tenants have removed their RVs from their respective sites since taking up residence in the park, nor do any of them own any residential property. None of the tenants pays any property taxes on the sites. Property taxes are paid by the landlord.

JR testified that he was unaware that any of the tenants had moved onto the property and lived there full-time. He testified that he was aware that some of the campsites had been rented out on a yearly basis, but that he understood these rentals to have been made by individuals who wanted to vacation on the property only and rented the site so that it would always be available for them.

3. Sale of the Property and Notices to End Tenancy

On October 29, 2020, the landlord entered into a contract or purchase and sale for the property with the BC Company “LBR” (full name on cover of this decision”). RW, an agent of LBR, attended the hearing. LBR is co-owned by a group of 14 friends and family members. RW is one of these individuals. RW testified that the owners of LBR purchased the property to develop it so that it would have 13 RV sites and one guest cabin for the accommodation of LBR’s owners.

On November 19, 2020, an agent of LBR executed a “Buyers notice to seller for vacant possession”, which stated:

> The buyer (or one or more of the spouses, children, and parents of the buyer or, in the case the family corporation (as defined in the *Residential Tenancy Act*), voting shareholders of the buyer) intend in good faith to occupy the property.
>
> Now therefore in accordance with section 49 of the *Residential Tenancy Act*, the buyer hereby requests that the seller, his landlord, give notice to (the tenant notice) to the tenants of the property pursuant to the Residential Tenancy Act terminating the tenancy and requiring the tenants to vacate the property by 1:00 pm on February 1st, 2021.

The landlord then prepared and issued Two Month Notices to End Tenancy for Landlord’s Use of Property (Form #RTB-32) to the tenants (and other occupants of the campsites and cottages) which listed the reason for ending the tenancy as:

> All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this notice because the purchaser or close family member intends in good faith to occupy the rental unit.

There is some disagreement as to whether these notices were adequately served on the tenants. However, it is not necessary for me to make a determination on this issue, as the parties agree that these notices cannot be valid as against the tenants. The parties agree that the *Residential Tenancy Act* (the “**RTA**”) cannot have any jurisdiction over the contractual relationship between the tenants and the landlord, as the tenants are not renting a “rental unit” as defined in the RTA. The *Manufactured Home Park Tenancy Act* does not contain any provision similar to section 49 of the RTA, which

allows a tenancy to be ended on two months' notice due to the sale pf the manufactured home park.

I explicitly note that I make no finding of fact relating to notices served on the occupants of the cabins, as counsel for the landlord indicated that the landlord is scheduled to appear at another dispute resolution hearing before the RTB that was brought by occupants of the cabins, at which the validity of their notices will be challenged. Counsel for the landlord indicated that the landlord will take the position that those notices are valid under the RTA. Accordingly, nothing in this decision should be interpreted as a finding of fact which would bind the arbitrator presiding over that hearing.

I additionally note that "Notices of Eviction" were posted on all the boats moored on the docks. These notices were not in the form of a Notice to End Tenancy pursuant to the Act or the RTA. Rather, they were a simple typed document, which stated:

> NOTICE OF EVICTION – JANUARY 8, 2020 [sic]
>
> Dear vessel owner,
>
> The property and the Marina have been sold and the new owners will be taking vacant possession on March 1st, 2021. As such, your vessel must be removed from this Wharf by Sunday, February 28th, 2021 latest. We appreciate your cooperation and patronage.
>
> Management, [the Marina]

The landlord acknowledged that it inadvertently listed the date on the notice as January 8, 2020, rather than the correct date of issued, January 8, 2021.

4. Parties' Position

The tenants argued that an implied oral tenancy agreement exist between each of them and the landlord and as such, the Act applies. The landlord argued that, at best, the tenants have a licenses to occupy portions of the property and, at worst, have no authorization whatsoever from the landlord to occupy portions of the property. Under either circumstance, it argued the Act would not apply.

4.1. Tenants' Position

The tenants argued that the relationship between each of them and the landlord is that of a landlord/tenant relationship as defined by the Act. The tenants cited RTB Policy Guideline 9 which, in part, states:

> Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:
>
> • the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and
>
> • the tenant pays a fixed amount for rent.

The tenants argued that each of them pays a fixed amount of rent to the landlord, via its agent, every month, and that they have exclusive occupancy of the sites they rent.

The tenant also argue that additional factors set out in Policy Guideline 9 favour a finding that the Act applies:

1) they own the RVs and rent only the site upon which the RV are located from the landlord and that they are permanent residents of the property; and
2) they are permanent residents of the park, as each:

a. has constructed permanent fixtures on their sites, such as decks, a workshop, a steam bath, and an outdoor kitchen;
b. has not moved their RVs since moving onto the property;
c. has permanently hooked up their RVs to water, sewer, and hydro lines provided by the landlord;
d. live in their RVs year-round; and
e. does not pay any property taxes on the sites they rent.

Additionally, the tenants argued that the landlord, by issuing each of them an invalid two month notice to end tenancy pursuant to the RTA, explicitly agreed that a landlord/tenant relationship existed between them. They argue that it was only after these notices were determined to be invalid that the landlord took the position that the parties' relationships was governed by a license to occupy or that no contractual relationship whatsoever existed. They argued that, if the landlord had license to occupy agreements with each of the tenants, it could have simple revoked those licenses, rather than issuing the invalid notices.

4.2. Landlord's Position

The landlord advanced a number of arguments as to why the Act should not apply:

1) as a matter of contract law, the terms of any agreement that permits the tenants to reside on the property are so uncertain as to be unenforceable;
2) as a matter of statutory interpretation:
    a. the landlord cannot be a "landlord" as defined by the Act; and
    b. the tenants' RVs are not "manufactured homes" as defined by the Act;
3) the property is not zoned to allow a manufactured home park;
4) the landlord did not authorize DR to to enter into any tenancy agreements on behalf of the landlord;
5) DR has breached his fiduciary duty to the landlord, and as such, any agreements he entered into on behalf of the landlord are invalid; and

6) if there are agreements between the landlord and the tenants, then it is a license to occupy, and not a tenancy agreement.

4.2.1. DR's lack of authority to create tenancy agreement

The landlord argued that it did not delegate the authority to create tenancy agreements under the Act to DR. It submitted that, since the property was not zoned for use as a manufactured home park, it could not have reasonably delegated DR the authority to enter into manufactured home park tenancy agreements, as to have done so would mean that it delegated the authority to break the law. It submitted that it would never have delegated such authority to DR.

The landlord argued that DR acted outside of the authority expressly granted to him by the landlord when entering into the agreements with the tenants. As such, the landlord argued that any agreement entered into with the tenants by DR was done so on his own behalf, and not on behalf of the landlord. Furthermore, as DR had no possessory right to any of the sites that the tenants occupy, any agreement between DR and the tenants is invalid, as DR cannot pass on the rights to something that he does not himself possess.

DR testified that he understood he had the authority from the landlord to enter into such agreements, and that it "was no secret to [JR] that there were mobile homes on the property" and that he had "full knowledge" of people renting them, as he was at the property "looking around" on more than one occasion, and "never objected" to them being there.

4.2.2. DR's conduct

The landlord argued that, in the course of performing his duties as manager of the property, DR breached his fiduciary duty to the landlord. The landlord submitted that

there are more boats moored at the marina that the records DR provided to the landlord show. The landlord submitted that this indicates DR is collecting moorage fees and not passing them on to the landlord. Additionally, RW testified that in the course of ending the moorage agreements in the wake of the sale of the marina, one renter indicated that he had paid moorage fees for one year in advance. RW testified that the landlord had no record of such a payment.

DR denied any impropriety on his part. He testified that he keeps excellent records of all transactions and can account for all income received from all tenants or renters at the marina. No documentary evidence was submitted by the landlord supporting its allegations against DR and the records DR referred to in his testimony were not submitted either.

Additionally, the landlord also alleged that DR sold, without right, the trailer belonging to the deceased manager. DR testified that JR told him “I don’t care about [the trailer], do what you want with it”. He testified he refurbished it and sold it, but that he has kept the proceeds from the sale in trust for the estate. He testified that after the former manager passed away, he contacted the manager’s girlfriend about the trailer, but that she never got back to him.

JR denied that he ever authorized or instructed DR to sell the deceased manager’s trailer.

4.2.3. Uncertainty of Terms

The landlord argued that the requirements for a contract to be created (offer, acceptance, an exchange of consideration, and certainty of terms) have not been met in any of the arrangements between the tenants and the landlord.

The landlord referenced *Kunzler v. The Owners, Strata Plan EPS 1433*, 2020 BCSC 576, which, at paragraph 63, the court held:

> [63] What constitutes an "essential" term in an agreement will depend on both the nature of the agreement and the circumstances of the case: *Concord Pacific* at para. 341. For a valid agreement of lease, there are at least four essential terms:
>
> (1) the identification of the lessor and the lessee;
> (2) the premises to be leased;
> (3) the commencement and duration of the term; and
> (4) the rent or other consideration to be paid.

The landlord submitted that none of these essential terms are clear from the evidentiary record. In *Kunzler*, the court continued:

> [55] Moreover, as Professor Fridman writes in *The Law of Contract in Canada*, 5th ed. (Scarborough: Thomson Carswell, 2006), at pp. 21-22:
>
> > For the most part, where terms are missing or have not been finalized, or there is some ambiguity about the precise meaning of what the parties appear to have agreed to, the general tenor of the decisions is against any possibility of completing the parties' work for them and creating a valid contract out of the vague contractual intent that may be evidenced by their language or conduct.

The landlord submitted that the mere payment of a fee cannot, by itself, impute a “lease” to any alleged agreement and that “the mere making of periodic payments from a person to a strata lot owner does not create a tenancy”, per *Kunzler* at paragraph 54. As such, the fact the tenants can prove they provided monthly rent cheques to DR does not mean that a tenancy agreement existed between each tenant and the landlord.

The landlord argued that there is “no evidence of any connection between [the tenants] and [the landlord]”, as there was no written contract, and as, despite the fact the monthly cheques provided to DR were made out to the landlord, the landlord was unaware what the funds represented. It submitted that the payments were provided by DR to it without identification. The landlord could not tell if the payments were for the rental of the cabins, the campsites, or slips on the dock.

Accordingly, the landlord argued, the landlord could not have been a party to any tenancy agreement, as it had no knowledge of the tenancy agreement.

The landlord argued that it lacked the requisite intent to form a tenancy agreement with any of the tenants. It submitted that the parties must have an intent to create a “relationship for long term occupancy of property in a manufactured home” and that “there is no evidence of [such an] intention”.

The landlord also argued that the agreements between the tenants and the landlord could not be valid under the Act, because section 12(1) of the *Manufactured Home Park Tenancy Regulations* (the “**Regulations**”) states:

> **Terms that must be included in a tenancy agreement**
> **12**(1) A landlord must ensure that a tenancy agreement contains
> (a) the standard terms, and
> (b) the boundaries of the manufactured home site measured from a fixed point of reference.

The landlord argued that an oral tenancy agreement, by its very nature, cannot include the boundaries of the manufactured home site. Additionally, it argued that no site plan showing the boundaries of the individual campsites exists, and as such the boundaries of each of the tenant’s manufactured home sites is unknowable and unfixed.

Accordingly, the landlord argued that it follows that if the borders of the purported manufactured home sites are not defined, then the tenants could not be said to have exclusive possession of the sites. Furthermore, the landlord asserted that it has “an absolute right of entry on to the property at any time”.

Additionally, the landlord asserted a right to revoke the tenants’ licenses to occupy the sites. On cross-examination DR testified that, one occasion, the issue of evicting a renter of one of the other campsites arose, but that after the issue was raised, the renter left of his own accord. When asked what he would have done had the renter refused to leave, DR answered “I’d tell him ‘you can’t live here’”.

The landlord conceded that the evidence supports the fact that the tenants permanently occupy the sites, as:

> 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.

In the alternative, the landlord argued that, if the facts supported a tenancy agreement existing, then DR (and not the landlord) was the lessor in such an agreement. It further argued that since DR did not have the right to rent out any part of the property on his own behalf, that any agreements between DR and the tenants is invalid.

4.2.4. The landlord does not meet the definition of “landlord” under the Act

The landlord argued that it did not meet the definition of “landlord” under the Act, which, states:

"landlord", in relation to a manufactured home site, includes any of the following:

(a) the owner of the manufactured home site, the owner's agent or another person who, on behalf of the landlord, permits occupation of the manufactured home site under a tenancy agreement;
(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
(c) a person, other than a tenant whose manufactured home occupies the manufactured home site, who
(i) is entitled to possession of the manufactured home site, and
(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the manufactured home site;
(d) a former landlord, when the context requires this;

It argued that it did not permit the occupation of any manufactured home site under a tenancy agreement and was not a person who exercised any rights of a landlord under a tenancy agreement or the Act. Rather, it took the position that JR was unaware of DR’s dealings with the tenants, and that any rights the tenants understood they had flowed from DR’s misrepresentations made by exceeding his authority, and not any due to any intention of JR or the landlord.

4.2.5. Property is not Zoned for a Manufactured Home Park

The landlord argued that since the property is not zoned for use as a manufactured home park, the landlord should not be imputed with the intention to have entered into tenancy agreements, as it would not have had an intention to violate the local zoning laws.

The landlord concedes that the existence of the bylaws does not preclude a tenancy from arising, however, as the BC Supreme Court has held, in *Wiebe v Olsen*, 2019 BCSC 1740 at paragraph 51, that "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."

4.2.6. RVs are not "Manufactured Homes"

The landlord argued that the tenants' RVs did not meet the definition of "manufactured home" in the Act. It submits that the relevant indicia (as set out at RTB Policy Guideline 9) are:

- Does the accommodation in question allow for movement from one place to another by being towed or carried?
- Does the accommodation in question allow for an intention to be used as living accommodation?

The landlord argued that "self-propelled" RV are not vehicles that can be towed or carried. It conceded that the TT and RK's RVs, being fifth-wheels, are not self-propelled and are capable of being towed or carried, and as such would meet this requirement. However, it argued that LM's motorhome was self-propelled and could not therefore be considered a manufactured home for the purposes of the Act.

The landlord argued that, while the tenants' RVs are "clearly intended for human habitation", this does not however mean that "the accommodation is appropriate for that purpose in [the property]". The landlord argued that all of the tenants' RVs are not

designed to be full-time living accommodations but are rather only intended by the manufacturer to be used on a temporary basis. It argued that the name for the class of vehicles itself ("recreational") indicates that the tenants' use of their RVs exceeds the intended scope of use of the vehicle's manufacturer.

Additionally, the landlord argued that since tenants' RV were not registered as manufactured home with the BC Manufactured Home Registry, they should not be considered "manufactured homes" for the purposes of the Act.

Analysis

1. Is DR an agent, and if so, did he have the authority to enter into tenancy agreements?

The landlord argued that DR did not have any authority to create tenancies pursuant to the Act. However, it has taken the position that he had the authority to secure new occupants for the dock and charge them moorage fees. Additionally, implicit in the landlord's position that JR believed that campsites had been rented out on a year-round basis to individuals for vacation purposes, is that DR had the authority to do (as I can see no other reasonable way that these sites have come to be rented out).

No evidence was presented at the hearing as to whether DR had the authority to enter into tenancies pursuant to the RTA when renting the cabins. However, the landlord's counsel stated that the landlord takes the position the relationships between the individuals living in the cabins (of which DR is one) and the landlord are governed by the Act.

There is nothing in the evidence to suggest that JR has played any role in securing occupants for any of the parts of the property available for rent. JR named DR manager and delegated the authority to "act in all matters necessary with regards to the Marina"

in May 2015. The parties have agreed that “Marina” refers to the entire property. I find this authority extended to entering into tenancy agreements relating the cabins.

The landlord argues that this authority did not extend to the creating manufactured home park tenancies under the Act, as the local zoning bylaws do not allow for the property to be used as a manufactured home park.

When appointing DR as manager, there is no evidence to suggest that JR advised him of the applicable bylaws or instructed him not to rent campsites to individuals for the purposes of moving onto them on a full-time permanent basis. There is no evidence before me which suggests that JR was even aware at the time DR was appointed manager that the bylaws prohibited the property to be used as a manufactured home park. Rather, I find it more likely that not that JR was unaware of the local zoning bylaws that applied to the property.

I find that, when delegating authority to DR, JR failed to turn his mind to whether the zoning bylaws permitted the landlord to use the property as a manufactured home park. I find that the authority he delegated to DR was comprehensive and covered all the duties that the prior manager had.

The prior manager rented out campsites to individuals to park their RVs on and reside therein on a full-time, permanent basis (tenant TT among them). If JR did not intend to delegate such authority to DR, he should have explicitly stated as much. I accept the landlord’s argument that it would not have delegated the authority to DR to intentionally breach the local zoning bylaws.

However, I find that it did delegate authority to DR to operate the property following the established practices of the property. These practices included renting out campsites to individuals to park their RVs on and reside on on a permanent basis. This practice happened to breach of the local zoning bylaw. However, this breach was not due to DR

acting outside the scope of his authority. Rather it was due to a failure of JR to ensure that the landlord's practices were in accordance with applicable laws.

As such, I do not find the agreements between the landlord and the tenants are invalid because they were created by DR acting outside the scope of his authority.

Additionally, there is nothing to suggest that, in entering into these agreements, DR was breaching his fiduciary duty to the landlord. The landlord has alleged that DR breached his fiduciary duty to the landlord in other ways (underreporting income generated by the property, for example). The landlord has not provided any documentary evidence to corroborate these allegations, and DR denied them. I find that, absence corroboration of these allegations, the landlord has failed to discharge its evidentiary burden to prove that DR breached any fiduciary duty owed to the landlord.

I also note that, even if there were such corroborating evidence, I am not persuaded that such a breach would cause tenancy agreements entered into on behalf of the landlord, within the scope of DR's delegated authority, to become invalid.

As such, I find that DR was delegated the authority to enter into the agreements, on behalf of the landlord, with tenants LM and RK, and that any subsequent actions unrelated to these agreements does not have the effect of invalidating them.

I note that TT entered into his agreement with the prior manager of the property. The landlord made no submissions as to the scope of the prior manager's authority or as to whether the prior manager breached any fiduciary duty owed to the landlord. As such, I see no reason to invalidate TT's agreement with the landlord on any of the bases the landlord has argued as reasons to invalid LM or RK's agreements.

2. Threshold Issues

The landlord has also advanced two “threshold” arguments, in which it argues that an element of the contractual agreement between the parties fails to meet a definition in the Act, which means that the Act cannot apply to it. Specifically, the landlord argued that it is not a “landlord” for the purposes of the Act, and that the tenants’ RVs are not “manufactured homes” as defined by the Act.

2.1. Is the landlord a “landlord”?

Section 1 of the Act defines “landlord” to include:

> (a) the owner of the manufactured home site, the owner's agent or another person who, on behalf of the landlord, permits occupation of the manufactured home site under a tenancy agreement;

The landlord states that it did not permit any of the tenants to occupy any part of the property under a tenancy agreement. Respectfully, I cannot agree with this position. It may be true that *JR* did not permit such occupation, but JR is not the landlord. The corporate entity he owns is the landlord. As stated above, this corporate entity delegated authority to DR to enter into tenancy agreements on its behalf. DR did this. When DR did this he was acing within the scope of his authority. As such, any agreements entered into by him were not done in his personal capacity, but rather in his capacity as an agent of the landlord, on behalf of the landlord.

It is not necessary for JR to have specific knowledge of an agreement in order for the landlord to have permitted the agreement to be created. Indeed, modern commerce would grind to a halt if it were a requirement that the owner of every corporation had personal knowledge of each and every contract that his company entered into. Authority is delegated to subordinates to facilitate the smooth flow of enterprise. I find that was the case here. DR, in his capacity as agent for the landlord, permitted the occupation of manufactured home sites under a tenancy agreement (I will discuss whether the sites

are “manufactured home sites” and whether the agreement is a “tenancy agreement” below).

As such, I find that the landlord is a “landlord” under the Act.

2.2. Are the RVs “manufactured homes”?

The landlord argued that the tenants’ RVs are not manufactured homes because:

1) they are self-propelled vehicles; and
2) they are not intended to be used as living accommodations.

In its written submissions, the landlord wrote:

> Any of the vehicles that are on the Property that are self-propelled [RVs] do not meet the definition of a manufactured home, that must be capable of being towed [a 5th wheel or caravan], or carried [a mobile home].
>
> [as written]

I note that both TT and RK occupy “fifth wheel”-style RVs. As such, only LM’s “motorhome”-style RV, is subject to the landlord’s first argument.

Section 1 of the Act defines “manufactured home”:

> "manufactured home" means a structure, other than a float home, 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;

The phrase “self-propelled” appears nowhere in the Act or in the RTB Policy Guidelines. Rather, it is used in *Steeves v Oak Bay Marina Ltd*., 2008 BCSC 1371 (which is cited in RTB Policy Guideline 9), where the court writes:

> [102] The defendant plans to convert the current use of the park from a manufactured home park where tenants reside more or less permanently on a year round basis to a seasonal forty-four site RV park and campground. The plaintiffs say that the planned change to an RV park in place of the current use of the park will still satisfy the definition of a manufactured home park because all RVs that are not self-propelled fall within the definition of manufactured home in the MHPTA. The plaintiffs say that the only change proposed by the defendant is from a year round operation to a seasonal operation. If effect, the plaintiffs say that there are already seasonal users of the park and what the defendant is proposing to do is not to change the use of the park but rather to simply expand the RV aspect of the current use.
>
> [103] The defendant says that RV use is not covered by the MHPTA and that rental to RV owners for short periods or for the entire summer season does not create a tenancy relationship that is governed by the MHPTA. The defendant says that the definition of manufactured home in the MHPTA and other provisions in the Act clearly suggest something far different from RVs on wheels.

In *Steeves*, the court is asked to determine whether the change in use of a manufactured home park to an RV park represents a change sufficient for terminating the existing tenancies pursuant to section 41 of the Act.

The court held:

> [12] 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, in my opinion, change the character or purpose of the MHPTA. I therefore reject the plaintiffs' argument that the conversion of the park from its current nature to a seasonal RV park does not represent a change to a use "other than a manufactured home park".

The court did not dismiss the tenants' application on the basis that "wheeled vehicles […] moved on their own power" could not be considered "manufactured homes" under the Act, but rather because, in that particular case, such vehicles would be used as temporary, and not permenant accommodations. Indeed, the court states that such vehicles are used as longer-term housing. Policy Guideline 9 adopts this position stating: "there are situations where an RV may be a permanent home if it is occupied for long, continuous periods."

The landlord has not provided me any authorities where this tribunal has refused jurisdiction solely on the basis that the purported "manufactured home" was "self-propelled". As such, I must rely on the language of the Act itself, that the structure is "designed, constructed or manufactured to be moved from one place to another by being towed or carried". LM's motorhome, while *designed* to be driven itself from one place to another, is also *capable* of being towed or carried from one place or another (say, for example, towed by a tow truck or carried on the back of a flat-bed truck). As such, I find that it was *constructed* or *manufactured* in such a way to allow for this to occur.

Accordingly, I find that LM's motorhome meets the first portion of the definition of "manufactured home" as it was designed and constructed to allow that it be towed or carried.

The landlord argued that all three of the tenants' RVs were not manufactured homes because they were not designed to be occupied on a permanent basis, and as such do not meet the second part of the definition of "manufactured home".

I do not find that the manufacturer's intended use for an RV precludes an RV from becoming a "manufactured home". The Act defines manufacture home to include a structure that is "used or intended to be used as living accommodation". So, even if a manufacturer might not intend an RV to be used as living accommodation, the owner of the RV might use it as such. The Act permits such actual use to cause an RV to become a "manufactured home".

The courts have upheld this interpretation. In *D & A Investments Inc. v Hawley*, 2008 BCSC 937, the court considered a judicial review of a decision of a dispute resolution officer of the RTB. The court wrote:

> [11] The dispute resolution officer quoted the part of Policy Guideline Number 9 setting out factors relied upon to distinguish "tenancy agreements" from "licences to occupy", which are said not to be covered by the Act. He noted that the Policy Guidelines suggested. ". . .that there is a distinction to be drawn from a mobile home intended for recreational use and one that is purpose built as a manufactured home". He noted that the fifth wheel trailers owned by Mr. Gurr and Mr. Price were intended for recreational use. However, he concluded ". . . that the actual use to which a structure is put is one of the factors that determines whether a structure falls within the definition of "manufactured home", irrespective of its intended use". In this case he found that each of the respondents used their respective structures as living accommodations, and as their principal residences. He thus determined that they fell within the definition of "manufactured home" under the Act.
>
> [emphasis added]

The court dismissed the application to set aside the dispute resolution officer's decision. As such, the analysis used by the presiding dispute resolution officer has the tacit approval of the court. I adopt the reasoning set out above.

Accordingly, I find that all three of the tenant's RVs are used as "living accommodations", as all three tenants gave uncontroverted testimony that the RVs are their sole and permanent place of residence and that they have lived there continuously since moving onto the property.

As such, I find that the RV meet the definition of "manufactured home" under the Act.

The landlord also argued that the tenants had not registered their RVs as manufactured homes, however, such registration is not required by the Act. Accordingly, find this lack of registration irrelevant to my determination.

3. License to Occupy or Tenancy Agreement?

Policy Guideline 9 States:

> Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:
>
> • the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and
> • the tenant pays a fixed amount for rent.

So, the tenants must prove that they have exclusive possession of each of their sites and that the pay a fixed amount of rent. If they do this, the evidentiary burden then shifts to the landlord, who must rebut the presumption that a tenancy agreement exists. In

McDonald v Creekside Campgrounds and RV Park, 2020 BCSC 2095 at paragraph 52, the court confirmed this shifting onus, stating it was patently unreasonable for an arbitrator to:

> [Fail] to consider that the evidentiary burden shifted to the respondents once the petitioners established that they had exclusive possession of the Site, subject to [the landlord's] right to access the site, for a term, and that the petitioners paid a fixed rental amount.

For the reasons that follow, I find that the tenants have satisfied their onus to create a presumption of a tenancy and that the landlords have failed to discharge their onus to displace this presumption.

3.1. Presumption of Tenancy

The landlord asserted that the tenants did not have exclusive possession of the sites where their RVs were parked. The basis for this assertion is rooted in its position that exclusive possession can only be granted by a tenancy agreement, and that a tenancy agreement does not exist. This is circular reasoning. The landlord offered no example of any time when the sites the RVs were located on were used for anything other than the tenants' exclusive use.

In contrast, each tenant explicitly testified that they had exclusive use of the sites the RVs were located on. They erected permanent structures on the sites for their own use. There is no suggestion that these structures were used by anyone other than the tenants or individuals with their permission. In his testimony, DR made no suggestion that the tenants had anything other than exclusive use of the sites.

The landlord suggested that the borders of the sites themselves are unclear, as no site plan defining "the boundaries of the manufactured home site measured from a fixed

point of reference” exists. Without clearly defined boundaries, it argued that there is no certainty as to what exactly was rented.

I accept the undisputed fact that no site plan exists defining the borders of the respective sites. However, I do not see this is a sufficient basis to find that a tenancy agreement could not exist under the Act. The definition of “tenancy agreement” at section one of the Act include both “written” and “oral” agreements as well as “express” and “implied” agreements. “Oral” or “implicit” agreement will rarely have the granular specify required by other sections of the Act. As such, I cannot accept that the failure to meet the requirement that the boundaries of a site be provided to the tenant would prevent a tenancy agreement from coming into existence. If that were the case, the existence of implicit tenancies or oral tenancies would be virtually impossible.

Additionally, I am not persuaded that the absence of any documents setting out the site boundaries on the property (whether provided to the tenants or not) precludes tenancies from arising. JR testified that he understood that the sites were rented out as campsites and that he thought some people rented them year-round so they would always have somewhere they could vacation. These campsites have hookups for water, electricity and sewage. It is clear that some kind of administrative division of the property existed for the purposes of renting sites, if only as seasonal campsites. I find that such a division provides sufficient specificity as to the borders of a particular site as to allow tenancies to arise.

I acknowledge that the borders may not be defined in the terms that would satisfy a surveying company. The borders of each site occupied by the tenants may be, in theory, “fuzzy”. However, in practice, there is no evidence that any of parties had any difficulty determining where the borders of each site extended. I find that this, coupled with the fact that the landlord had some kind of framework for renting out specific plots of land located on the property to seasonal campers, is a sufficient basis to lead me to

conclude that the boundaries of the sites rented by the tenants were defined to an extent that would allow tenancies to arise.

As such, and as I have found that the tenants have demonstrated that they had exclusive possession of the sites on which their RVs were located, I find that the tenants have discharged their burden to prove the first requirement set out above.

It is not contested that the tenants have made consistent monthly payments to the landlord by way of providing cheques to DR. These cheques are deposited in the landlord's bank account. These payments are the means by which the tenants compensate the landlord for staying on the property. The landlord took the position that it did not know what these payments represented, and were unsure if they were for moorage fees, rent from cabins, or rent to reserve a campsite year-round. In any of these situations, however, I find that the payment is for a fixed amount, and that it is for "rent" of *some part* of the property. Accordingly, I find that the second requirement is satisfied.

Accordingly, I find that the tenants have discharged their evidentiary burden to create a presumption that tenancy agreements exist between each of them and the landlord.

3.2. Is the Presumption Rebutted?

The landlord now bears the onus to prove that a tenancy does not exist. The landlord has advanced two lines of arguments:

1) No legally binding agreement exists between the parties at all, for want of certainty of the terms; and
2) If binding agreements exist between the parties, they are licenses to occupy, rather than tenancy agreements.

3.2.1. Do the Agreements lack certainty?

The landlord argued that none of the following “essential” terms of the agreements between it and the tenants were certain:

1) the identification of the lessor and the lessee;
2) the premises to be leased;
3) the commencement and duration of the term; and
4) the rent or other consideration to be paid.

I have already addressed the first and second of these points in my decision:

1) the lessor is the landlord and the lessees are the tenants. DR, as agent, entered into the agreements on behalf of the landlord.
2) the premises are the campsites upon which the RVs are situate, the boundaries of these sites are certain enough for all practical purposes, and at no point during the tenancies has there been disputes relating to the boundaries.

As to the commencement and duration of the term of the agreement, I find that such terms are certain as well. The landlord did not dispute that each of the tenants moved onto the property as they claimed (TT in 2013, LM in 2015, and RK in 2019). The date each of them moved onto the property is the starting date of the tenancy.

There are two types of tenancies that can be established under the Act: a “periodic” tenancy (often referred to as a “month-to-month” tenancy), which continues on a monthly basis (or, less commonly, another interval of time) until such time as one of the parties ends it in accordance with the Act; and a “fixed-term” tenancy, whose term ends on a fixed date established at the start of the tenancy, following which the tenancy either ends (if certain conditions are satisfied) or continues as a periodic tenancy (per section 37(3) of the Act).

I do not find that the lack of specificity as to whether the agreement between the landlord and each tenant was for a fixed term or was merely on a periodic basis has the effect of making the agreement so uncertain as to be unenforceable. Section 1 of the Act specifically allows for tenancy agreements to be “implied”. I find it unlikely that in a situation where a tenancy agreement arises through implication, the parties would have specifically discussed or agreed to a length of term of the tenancy. As such, I think it reasonable to find that the term of any implied tenancy would be that of a periodic tenancy, as a specific duration of a tenancy would not be able to be implied, but the intention to create a tenancy agreement (or satisfy the requirements that would lead to a tenancy agreement being created) is implied.

As such, I find that the duration of the term of the tenancy is not uncertain. I find that in the absence of evidence as to a specific duration of a tenancy, the tenancy is implicitly a periodic tenancy. The length of each period is determined by the frequency with which rent payments are required.

The landlord does not dispute the fact that each of the tenants made monthly payments to the landlord, via DR. Rather, the landlord argued that it did not know what these payments represented (that is, payments for cabin rentals, moorage fees, or annual fees to reserve a campsite for vacation purposes), and as such, there is no certainty as to the rent to be paid.

Respectfully, the landlord’s argument conflates knowledge of its owner with the knowledge of the corporate landlord. As stated above, the corporate landlord had an authorized agent (DR) administering the property. There is no doubt that DR was aware what each of the tenants’ monthly payment represented: they were rent payments collected for each tenants’ use of the site upon which their manufactured homes were located. As DR had knowledge of what the monthly payments represented, I find that the landlord had knowledge of what the payments represented.

The landlord argued that “the mere making of period payments from a person to a strata lot owner does not create a tenancy”, citing *Kunzler* at paragraph 54. However, the facts in that case are dissimilar to those of the present case. In *Kunzler*, the court considered whether a corporate entity who had an “informal lease” of a strata lot with the owners of the strata lot (who themselves were owners of the corporate entity) was a “tenant” for the purposes of the *Strata Property Act*. The corporate entity had not paid any rent to the owners and did not occupy the strata unit. The owners stated that they intended to give the corporate entity exclusive use and occupation of the strata lot. The court considered such an agreement to be an “agreement to agree”, which is not recognized at law. The court held:

> [64] In this case, there is no evidence of an agreement to any terms such as rental rate, responsibility for taxes, or the term of the lease. At best there is an intention to create a landlord/tenant relationship; however, such generalized intention without any further evidence of agreement as to essential terms does not establish a contract or tenancy.

The present situation is distinguished from *Kunzler* in that there is no “agreement to agree”, the tenants actually occupy the sites they are renting, they pay a fixed amount to the landlord every month, and the received defined services for such payments (permission to occupy the site, water, sewage, and hydro hookups).

Kunzler itself refers to another case, *Jay v. The Owners Strata Plan NW 3353*, 2019 BCCA 10, for the proposition that “the mere making of period payments from a person to a strata lot owner does not create a tenancy”. *Jay* addresses a situation where the appellant occupied of a strata lot owned by his father and his father’s wife. Per the strata bylaws, in order to be eligible to be a member of the strata council, the member must be an owner or a tenant. The applicant sought a declaration that he was “tenant” for the purposes of the *Strata Property Act*. The court declined to find that the appellant was a tenant because of the absence of documentary evidence that he paid any rent

(payments were periodic in 2011, and irregular after that, and the judge was “struck by the vagueness of the evidence”). Additionally, the appellant had not signed a “Form K”, which the *Strata Property Act* requires tenants to sign at the start of tenancy.

The present case is dissimilar from *Jay* as well. There is no familial connection between the landlord, JR, DR, or any of the landlord’s agents and any of the tenants. The tenants’ payments are made regularly. The tenants have not failed to comply with statutory prerequisites for a tenancy (although I note that the landlord failed to meet its obligation to prepare a written tenancy agreement, as per section 13. However, as the Act defines a “tenancy agreement” to include “oral” agreements, I do not find that this causes the agreement between the parties to fall short of being a tenancy agreement).

As such, I do not find either *Kunzler* or *Jay* to prevent me from finding that a tenancy agreement exists in circumstances where regular payments are made by occupants to an agent of the landlord, who has full knowledge of the reason the tenants are making the payments, and where there are other indicia which support the finding that a tenancy agreement exists.

Accordingly, I do not find that the agreements between the landlord and each of the tenants are so uncertain as to make them unenforceable. Rather, I find that they are agreements whereby each of the tenants may permanently occupy the site on which the RV is located and receive water, sewage, and hydro hookups, and in exchange they pay a fixed amount of rent. The parties have not committed to the tenants remaining on the sites for any specific amount of time, so the tenancy would be on a periodic, month-to-month basis.

3.2.2. Are the Agreements Licenses to Occupy?

Finally, the landlord argued that the agreements between it and each tenant are licenses to occupy, and not tenancy agreements.

Policy Guideline 9 sets out factors to consider when determining if an agreement is a license to occupy or a tenancy. No single factor is determinative. It states:

The home is a permanent primary residence

In *Steeves v Oak Bay Marina Ltd*., 2008 BCSC 1371, the BC Supreme Court found:

> 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.

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.

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 that is occupied for “long, continuous periods.”

While not solely determinative, if the home is a permanent primary residence then the MHPTA may apply even if the home is in an RV park or campground. See also: *D. & A. Investments Inc. v. Hawley*, 2008 BCSC 937.

Factors that may suggest the MHPTA does not apply include:

- the park (or property) owner retains access to or control over portions of the site and retains the right to enter the site without notice;
- 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.

Other factors

Other factors that may distinguish a tenancy agreement from a licence to occupy include:

- payment of a security deposit;
- the parties have a family or personal relationship, and occupancy is given because of generosity rather than business considerations.

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."

The parties agree that the property is not zoned for use as a manufactured home park. As stated in Policy Guideline 9, this does not invalidate a tenancy agreement and does not prevent me from finding that a tenancy agreement exists, despite the breach of the bylaw. I consider this factor to weakly support the landlord's position.

The Act does not permit security deposits to be collected (see section 17(2)). The tenants did not pay security deposits, which is consistent with the Act applying. This weakly supports the tenants' position.

There is nothing in the evidentiary record to suggest that any of the tenant have family or personal relationships with the landlord, DR, or JR, or that occupancy was given because of generosity rather than business considerations. This supports the tenants' position as well.

The landlords have not presented any evidence that the tenants do not occupy the sites on a permanent basis. I accept the tenants' testimony that they each occupy their respective site year-round, that they have not moved their RVs from their respective sites since moving onto the property and that they do not have any other place of

residence. I accept they have resided on the site for the durations they indicated (TT since 2013, LM since 2015, and RK since 2019). The manufactured homes are hooked up to services and facilities meant for permanent housing (water, sewage removal, and hydro). Each tenant has added permanent fixed to the site (e.g., decks, carport, steam bath, workshop, outdoor kitchen) which the landlord has implicitly permitted to be erected (there is no evidence that DR or JR, on one of his visits to the property, ever objected to their presence).

I am satisfied that the tenants reside on their respective sites on a permanent basis. This factor strongly favours the existence of a tenancy agreement.

The landlord has failed to discharge its evidentiary burden to show that it retains any control over each of the tenants' site, or that it has the right to enter the sites without notice. It has only made a bare assertion. Rent is charged to each of the tenants on a monthly basis, and the tenants do not pay GST on it. There are no restrictions on visitor hours. The tenancies are all over one year in length. These factor all support the agreements between the parties being tenancies, and not licenses to occupy.

The landlord pays for the utilities. This is a factor that may support the agreements being licenses to occupy, although I note that it is not uncommon for established tenancy agreements to incorporate the costs of utilities into a tenant's monthly rent payment.

The landlord asserted that the fact it pays GST on the rent it collects from the tenants indicates that the arrangement between the parties is "commercial" and not "residential". The landlord has not provided any documentation supporting this assertion, and in any event, I understand the decision to pay GST on rents collected to be one that any landlord may make as part of their decisions as to how best structure their business (treating the rent payments as "income from a property" has different tax implications from treating it as "business income"). I am not persuaded that such an election makes

much of a difference as to whether an agreement is a license to occupy or a tenancy, as it is a decision which solely impacts the landlord.

There is no indication that the parties have agreed that the tenants may be evicted without reason or may vacate without notice. Indeed, the fact that the landlord issued the tenants notices to end tenancy under the RTA indicates that it (incorrectly) believed that the tenants had rights under that Act.

I accept that JR was likely unaware of the legislation that was applicable to the agreements between the tenants and the landlord (as is evidenced by his issuing of the aforementioned two-month notices). This ignorance does not excuse the landlord from any obligations it has under any applicable piece of legislation. Additionally, this ignorance undercuts the landlord's current assertions regarding their right of access and their right of termination. These are not rights that JR knew the landlord had at the time the notices to end tenancy were issued (if he did not this, he would have exercised the right to unilaterally evict the tenants rather than attempting to comply with the RTA).

I find that this assertion of the right to terminate the license to occupy at will is not based on any rights the landlord thought it had, exercised, or attempted to exercise during the tenancy. I note that there is no evidence that the landlord or its agents ever asserted a right to revoke a license during the course of any of the tenancies.

The closest evidence of this was DR's response to the hypothetical scenario where a former renter whose conduct rose to the level where an eviction might have been warrant refused to leave of his own accord was that he would have told the renter that he could not live at the park anymore. I do not find such a response to indicate that the landlord possessed a right to revoke a tenancy at will (as it would have with a license to occupy).

I find that, after considering all the circumstances and factors set out in Policy Guideline 9, each of the tenants and the landlord, via its agent DR (or his predecessor, in the case of TT) acting within his delegated authority, intended to enter into tenancy agreements. It may be that JR did not have such an intention, and that he understood that the campsites were being rented out only for vacation purposes. However, as discussed above, JR's intention and JR's knowledge are not the same as the landlord's intentions and the landlord's knowledge. The landlord delegated a significant amount of authority to DR (and his predecessor) so that JR would not need to be concerned with the operations of the property. DR's intention and knowledge support the finding that tenancy agreements were entered into.

The circumstances of each of the tenants' living arrangement (set out above) are consistent with their intention to create a tenancy. Throughout the tenancies, their actions have been consistent with this intention. The landlord's actions are consistent with this intention too, even after it contracted to sell the property to LBR (it issued notices to end tenancies to each of the tenants, albeit pursuant to the incorrect statute). It was only after the landlord discovered that it was unable to end the tenants' tenancies, that it acted contrary to this intention.

As such, I find that the landlord and each of the tenants has a valid tenancy agreement under the Act. As such, the landlord and each tenant are subject to the Act and each has all rights and obligations granted to them by the Act.

Accordingly, the tenants have been successful in their application. The Act applied to each of their agreements with the landlord.

Pursuant to section 65(1) of the Act, as the tenants has been successful in the application, they each may recover their filing fee from the landlord ($100).

Pursuant to section 65(2) of the Act, each tenant may deduct $100 from one future month's rent in satisfaction of this amount.

Conclusion

The tenants have been successful in their application. The Act applies to each of their agreements with the landlord. The Residential Tenancy Branch has jurisdiction over dispute between the parties relating to their tenancies.

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: March 26, 2021

Residential Tenancy Branch