



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACK'S BOONDOCK RANCH
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

On January 19, 2021, the Applicants applied for a Dispute Resolution proceeding seeking an Order for the Landlord to comply pursuant to Section 55 of the *Act* of the *Manufactured Home Park Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 65 of the *Act*.

Both the Applicants and the Respondent attended the hearing.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. All in attendance provided a solemn affirmation.

The Applicants advised that they served the Respondent with the Notice of Hearing and evidence package by hand on January 23, 2021, and the Respondent confirmed that she received this package. Based on this undisputed testimony, and in accordance with Sections 82 and 83 of the *Act*, I am satisfied that the Respondent was served the Applicants' Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

The Respondent advised that she served her evidence to the Applicants by hand on March 28, 2021 and the Applicants confirmed that they received this evidence. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Applicants entitled to an Order to comply?
- Are the Applicants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Respondent advised that this is a temporary camping site where there are no specific site numbers where people reside; however, each area does have a designated site name. As such, no residents receive mail directly to their site. The Applicants moved onto the property on June 1, 2019 and then moved to a different site within a few months. Rent was established at an amount of \$800.00 per month, and it was due on the first day of each month. GST was not collected on the rent and neither a security deposit nor a pet damage deposit was collected either.

She testified that the Applicants live in a wheeled Winnebago and her intention when she rented this area was for a seasonal, short-term rental. She does not believe that people will stay for extended periods of time; however, as the pandemic started, the residents of the campground continued to stay. She stated that the agreement that was signed allows for the tenancy to be revoked at any time. As well, she stated that she has exclusive use of the site, whereby she can and does enter without providing notice. She submitted that there are hookups for water and sewer; however, permanent features are not allowed and anything that is erected must be able to be dismantled within an hour. As well, she stated that any visitors are required to leave the campground by 11:00 PM, as per the tenancy agreement.

The Applicants advised that they live full-time in their motorhome. They stated that the Respondent enters the site monthly and calls before she does. They agreed that rent was fixed at \$800.00 per month and it was not their understanding that the tenancy could be revoked at any time. They confirmed that they have not erected any permanent structures, but they did build steps and they were invited to build a garden. They acknowledged that there was a rule that the residents must move every six months and they stated that the rule to be able to dismantle anything within an hour was revoked for them. They advised that there are supposed to be restricted hours for visitors; however, they have had guests stay later than what was stipulated.

Applicant P.R. advised that when they first moved there, their intent was to stay long term and they were never told that they would be required to move. However, Applicant H.R. contradictorily advised that they moved there temporarily. They stated that they erected a garden fence without permission in writing and that they tend to blackberry bushes. They submitted that there are 16 other groups of people living on the property and they have been doing so for a considerable amount of time.

The Respondent advised that she has never called the Applicants before she entered the site and she asked the Applicants to take down the garden fence; however, they refused. She stated that the Applicants' stairs were simply pallets, and she stated that the residents are permitted to have planters that can be moved. She reiterated that the Applicants acknowledged that their intention was to move onto the property temporarily as they were looking to purchase a permanent home to occupy.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

When reviewing the evidence and testimony before me, I am satisfied that the Applicants are living on the Respondent's property in their own motorhome. While the nature of this tenancy does share some instances which bear consideration that this situation should fall under the jurisdiction of the *Act*, I find that there are significant details which indicate to me, in my view, that this is not a tenancy in which the *Act* has purview.

Firstly, I find it important to note that the agreement that was signed contains many references to the property being a campsite. Furthermore, the agreement indicates that a credit card charge for payment of rent will be added to the cost of rent if this manner of payment is utilized. I find that the option of payment for rent by way credit card is more indicative of a business and that this supports the Respondent's view that this property was a campsite rather than a manufactured home park. In addition, the agreement states that the ranch is private property, that the rules can be amended without notice, that people can be refused entry onto the property, that guests can be evicted without a refund, and that people can be refused accommodation. Moreover, the agreement explicitly states that it is the party's understanding that the ranch is "not a Mobile Home Park."

Moreover, when reviewing the Applicants' evidence, they indicated that an outhouse was provided and that the compost toilet that was provided was blocked, causing the Applicants some inconvenience. In addition, they stated that a community freezer was provided. In my view, I do not find that provision of these types of shared facilities for all occupants of the property to be consistent with a manufactured home park.

As well, when reviewing the Applicants' pictures submitted of their site, I do not find that these pictures are compelling or persuasive in demonstrating that there are any structures or features that would be considered of permanence. It is apparent, in my view, that this housing situation is of a transient nature and is consistent with the Respondent's testimony that any items must be able to be deconstructed or removed within an hour, prior to vacating. This is also supported by the Applicants' own testimony that they acknowledged that there was a rule that the residents of the property must move every six months.

Furthermore, the Applicants acknowledged that there were restricted hours for guests and that they have not complied with these established rules. I do not find it consistent with a manufactured home park tenancy that a landlord can establish visiting hours for guests on a tenant's site.

Finally, I find it important to note that the Applicants provided testimony that contradicted each other with respect to their intention of either residing there long-term or temporarily. I found the Applicants' testimony to be inconsistent and questionable.

Based on my analysis above, I find it more likely than not that the Applicants were originally permitted to have their motor home on the property on June 1, 2019, and that due to the COVID-19 pandemic, their stay was prolonged. However, I do not find that

this extended stay, or any of the evidence provided, supports that a tenancy was created under the *Act*. I am satisfied that this was a licence to occupy situation and that the area that was rented to the Applicants was as a campsite.

As I am satisfied that the original agreement was a licence to occupy, I find that there is no Landlord/Tenant relationship between the parties as a tenancy has not been established. Ultimately, even if the parties intended upon entering into a tenancy agreement as contemplated under Section 1 of the *Act*, the *Act* would not apply to this situation. As a result, I have no jurisdiction to consider this Application and render a Decision on this matter.

As the Applicants were not successful in this Application, I find that the Applicants are not entitled to recover the \$100.00 filing fee.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this Application. This Application is dismissed in its entirety, without leave to reapply.

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: April 21, 2021

Residential Tenancy Branch