Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CREEKSIDE CAMPGROUND & RV PARK and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT, MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the *MHPTA*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 60;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 55;
- authorization to recover his filing fee for this application from the landlord pursuant to section 65.

This matter was originally heard in June 2020 where the Arbitrator found that they did not have jurisdiction to hear the matter. The tenants filed a Judicial Review where it was ordered back to the Branch to have it reheard. The matter proceeded and completed on this date. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issue – Jurisdiction

The central issue in this matter is whether the Branch has jurisdiction to hear this matter. The tenants advocate submits that the Branch does have authority and based on that authority, the landlord would not be able to charge a guest fee, accordingly; the tenants should be entitled to the recovery of the $280.00 that they have paid for guest fees along with the $100.00 filing fee for this application.

The advocate provided the following reasons that the tenants believe that they have a tenancy agreement and that this matter falls under the Manufactured Home Park Tenancy Act. The advocate submits the following:

- The tenants have exclusive possession to the site;
- The tenants did not pay a security deposit:
- The tenants live in the long-term residence portion of the park, not the short-term tourist area;
- The R.V. meets the definition of a manufactured home as it is being used as the tenant's permanent residence;
- The site provides frost free water lines;
- There is no restriction on visiting hours;
- There is no family type relationship;
- The tenants pay their own Wi-Fi and cable;
- The landlord pays the electricity, water and septic;
- The tenants pay a monthly fixed rent with no GST charged;
- The tenants have permanent structures such as a shed, roof and deck;
- The R.V. has not been moved since September 2017.

The advocate submits that the tenants have added the deck, shed and roof with the landlord's permission and have been on the site for over a year. The advocate submits that GST is charged for seasonal guests or tourists but is not reflected on the long-term residents receipts. The advocate submits that simply by the nature of the long-term tenure of this relationship and that this is the tenants permanent and only home, this is a tenancy and not a licence to occupy. The advocate submits that these factors clearly show that this is a tenancy that is regulated under the Manufactured Home Park Tenancy Act.

The landlord gave the following reasons why she felt this is a licence to occupy and therefore doesn't fall under the Manufactured Home Park Tenancy Act.

- The R.V. has wheels and can be towed or moved on its own;
- This is a campground and has always been a campground, not a manufacture home park;
- GST is charged on the rent and the tenant should know that since she was a former employee of the park;
- The tenant put up structures without the landlords permission;
- Tenants have moved around to different sites in the park during their duration;
- Frost free water lines were not provided.

The landlord reiterated several times during the hearing she just asks that the tenants follow the park rules. The landlord testified that she doesn't understand why the tenants would risk their home by not following the rules of the park and why they've chosen this course of action.

Analysis

Residential Tenancy Policy Guideline 9 helps address the issue before me as follows, it states:

> *Some factors that may help distinguish a tenancy agreement from a licence to occupy are discussed below. No single factor is determinative. 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.*
>
> *See also: Wiebe v Olsen, 2019 BCSC 1740. 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 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.*
>
> *An arbitrator will weigh all the factors for and against finding that a tenancy exists.*

As noted on the last night of the above quotation, I have considered all the aspects before me including permanence, intent, use, duration, and the practical application of this relationship. The tenants R.V. is their permanent home. The intent to be in this location is for long term residency, they have lived in the park as such. The tenants have not moved their R.V. or left the park since 2017.

Furthermore, the tenants reside in the long-term portion of the park. In the landlord's own testimony, she testified that there are many long-term tenants in that part of the park. The landlord did not provide testimony that would infer that they were on a limited timeline in that portion of the park or that the termination of their stay was imminent. This hearing was 90 minutes long and each party was given a full opportunity to present their position and respond to the other party's evidence. It is worth noting that the landlord gave very limited testimony in this hearing and spoke for less than ten minutes despite being given a full opportunity to present her position and challenge that of the tenants. The landlord repeated several times that "this is a campground and its always been a campground".

I find that on the totality of the evidence and taking into account *Steeves* and *Wiebe;* that the R.V. does meet the criteria of a manufactured home and that due to the length of time the tenants have been in the park and the almost four years that the R.V. has been in its present location, that this is not a licence to occupy but a tenancy. I find that the use of this R.V. is the tenant's home and has been their permanent residence since 2017. I find that the Manufactured Home Park Tenancy applies. To be clear; this is a

determination for these participants and not a blanket order or finding for others in the park.

As I have found that I have jurisdiction to hear this matter, I now address the $280.00 guest fee charge. The landlord imposed these fees as she felt she was able to since it was a campground.

The Manufactured Home Park Tenancy Regulations addresses this issue as follows:

Prohibited fees

> **3** (1)A landlord must not charge a guest fee, whether or not the guest stays overnight.

Based on the above, I find that the tenants were not required to pay this fee. The tenants are entitled to the recovery of this amount along with the recovery of the $100.00 filing fee for this application. The tenants are granted a monetary order of $380.00.

Conclusion

The tenants have established a claim for $380.00. I grant the tenants an order under section 67 for the balance due of $380.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: May 17, 2021

Residential Tenancy Branch