



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sun Valley Trout Park Inc and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

**FFT, CNC, OLC, MNDCT, RR, DRI
FFL, OPC, MNRL, OFL**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- Cancellation of a Notice of Rent Increase pursuant to section 43;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;
- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

BL and BR attended as agents and MC as lawyer for the landlord ("the landlord"). The tenants attended.

All parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

Recording

The parties were cautioned that recordings of the hearing were not permitted pursuant to Rule 6.11 of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of the requirement and further confirmed they were not making recordings of the hearing.

Delivery of Decision

Each party confirmed their email address to which a copy of the Decision will be sent.

Settlement Discussions

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

During the lengthy hearing, I attempted to assist the parties to resolve their dispute pursuant to section 63 of the Act. These efforts were not successful.

Preliminary Issue: Jurisdiction

The initial question of jurisdiction was dealt with and proved conclusive.

Only admissible documentary evidence served according to the Act and Rules is considered in my Decision.

Issue(s) to be Decided

Is the relationship between the parties governed by the *Act*?

Background and Evidence

The parties submitted considerable conflicting testimony in a 90-minute hearing. Not all the evidence is referred to in this Decision. Only key facts are provided.

The tenants have lived in their trailer in the landlord's "Park" since 2015. The monthly rent is now \$575.00. The landlord said the tenants have not lived in the unit since 2019 which the tenants denied although they were unclear about how often or how long they stayed.

The landlord said there is a fish farm on the Park property and he allows temporary visitation for a fee depending on the length of stay. He acknowledged that some trailers have been there "for years"

The tenant's trailer is designed as a recreational vehicle. It is on wheels and is designed to be hooked to a motorized vehicle and towed from place to place.

The trailer was connected to hydro and water in the Park. The tenants are responsible to pay for hydro following billing by the landlord.

Two registration forms were submitted which stated that the form is a “camping registration” and that it “does not constitute a lease or rental agreement under the landlord tenant act”. The forms are for the months of August and September 2021 and relate to the tenants’ trailer. These were the only forms submitted regarding the arrangement between the parties for the trailer.

The landlord used RTB forms in issuing the notices to end the tenancy for nonpayment of rent and for cause. The landlord described “garbage” around the trailer, behaviour by the tenants that disturbed others, and outstanding rent.

The landlord stated as follows. There are 58 spots in the park. The utilities to the trailer are not frost free. GST is charged on the fee for use, which is monthly in the tenants’ situation. There is no security deposit. There are park rules, but a copy was not submitted. No information was submitted regarding zoning.

The tenants stated the trailer is permanent. They testified they skirted the trailer’s exposed lower portion.

The landlord testified that he received many complaints about the condition of the trailer and the behaviour of the tenants. They testified that the trailer was leaking sewage and the spot looked abandoned and untended. The landlord issued a notice to the tenants and demanded that they move the trailer off the park. As the tenants did not respond, the landlord moved the trailer to another spot earlier in 2021. The landlord remediated the sewage leakage and cleaned up the site. The landlord also had the tenants’ vehicle towed. The tenants denied there was any such leakage or that moving the trailer/motor vehicle was necessary.

In their written application, the tenants asserted that the landlord’s motives were to increase rent, stating in part:

They want more money as there is alot of compition for sites forrest fires covid & evictions from peach arch RV in white rock last year. Landlord tried to get us to sign Inn keeps notice we did not sign any papers that berni insisted we sign, we said no, and then he said, showers are going to turn off.

The landlord testified that the arrangement with the tenants is akin to a “license to occupy”. The tenants disagreed with the landlord’s interpretation and asserted they had exclusive possession of the spot on which the trailer was located.

The tenants brought this application for compensation from the landlord. In turn, the landlord applied for relief including an Order of Possession.

Analysis

The question is whether the relationship between the parties is one of landlord and tenant under the *Act*.

The *Act* defines a “manufactured home” as follows:

"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 tenant’s trailer comes within that definition. However, that is not determinative as to whether the *Act* applies. Section 2 states that the *Act* applies “to tenancy agreements, manufactured home sites and manufactured home parks”. Each is considered.

“Tenancy” and “tenancy agreement” are defined in the *Act* as:

"tenancy" *means a tenant's right to possession of a manufactured home site under a tenancy agreement;*

"tenancy agreement" *means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities;*

Residential Tenancy Policy Guideline 9, “Tenancy Agreement and Licenses to Occupy” addresses the difference between manufactured home park tenancies, which are covered by the Act, and recreational vehicle or other sites, which are not.

Of note, the Guideline states in part:

It is up to the party making an application under the MHPTA to show that a tenancy agreement exists. To determine whether a tenancy or licence to occupy exists, an arbitrator will consider what the parties intended, and all the circumstances surrounding the occupation of the rental unit or site. 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 if it is occupied for “long, continuous periods.” See also: D. & A. Investments Inc. v. Hawley, 2008 BCSC 937.

As a result, if the home is a permanent primary residence then the MHPTA may apply even if the home is in an RV park or campground. 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;*

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.*

An arbitrator will weigh all the factors for and against finding that a tenancy exists.

While the parties had an acrimonious relationship and disagreed about many aspects of their history, I found the landlord’s testimony credible, matter of fact and reasonable. I give significant weight to the landlord’s evidence. Where the evidence of the parties is in conflict, I prefer the landlord’s version of events as the more likely to be reliable and accurate.

My key findings are as follows. The manufactured home is of a type intended for recreational use rather than residential use. It is on wheels, can be moved, and was moved recently. It is not a permanent structure although the tenants may have added skirting or other additions. The connections available for water and sewer services do not appear to be “frost free” though the tenants may have insulated them. The trailer is also not occupied by the tenants full time as a permanent residence. The landlord had reasonable grounds to believe the tenants had abandoned the trailer because of arrears

of rent, the condition of the trailer, and the tenants living elsewhere for a considerable time. As well, no security deposit was provided, and GST was charged on rent.

Considering these factors, I find that the relationship is not one of landlord and tenant under the *Act*.

Regarding the remaining two areas, the *Act* provides:

- **"*manufactured home park*"** means the parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located;
- **"*manufactured home site*"** means a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home;

Since the tenants do not have the right to exclusive possession of the site, merely a license to occupy it, the site cannot be considered a manufactured home site.

I find that the relationship between the parties is not one of landlord and tenant under the *Act*. The Residential Tenancy Branch Dispute Resolution Services are not available with respect to these applications.

Conclusion

I find that the tenants' relationship with the landlord is not a tenancy agreement under the *Act*. Both applications are dismissed for want of jurisdiction.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 16, 2021

Residential Tenancy Branch