



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HAZELMERE PARK AND CAMPGROUND and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT, FFT

Introduction

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

- an order of possession of the rental unit pursuant to section 47;
- authorization to recover his filing fee for this application from the landlord pursuant to section 65.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenants served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties also confirmed the landlord served the tenants with their submitted documentary evidence via Canada Post Registered Mail. On this basis, both parties are found to have been properly served as per sections 88 and 89 of the Act.

Preliminary Issue(s)

During the hearing the landlord argued that the Residential Tenancy Act does not have jurisdiction in this matter. The landlord stated that under Residential Tenancy Branch Policy Guideline #9, Tenancy Agreements and Licenses to Occupy that there is no tenancy agreement, but that there is only a license to occupy the site as this is a RV park and campground.

The landlord referenced the “Respondent Evidence Package” section #1 in which there is a “Daily Rate” for rental of the site.

The landlord referred to section #6 Utility Charges in which, “Water, sewage, internet, and cable usages are provided by the HRVC at no charge. HRVC is not equipped to provide utility connections that support a primary resident, all Guests must be prepared for seasonal temporary use of the campsite and recreational vehicles must be self-sufficient, Hydro fees are charged accordingly based on the respective campsite usage for the duration of the Guests stay.”

The landlord referred to section #13, Campsites & Common Areas, which states: “The water, sewage and electrical connections are for temporary use only and HRVC retains access over these connections at all times. HRVC retains access to and control over common areas, and all vacant & occupied campsites at all times without notice. HRVC at its sole discretion reserves the right to impose a \$75 fine if an occupied campsite is kept in an unsightly manner.”

The landlord referenced section #16, Visitors, which states, “You are responsible for your visitors and their actions in the park. Visitors are only permitted during the hours of 7:00am to 11:00pm. All visitors must park across from the pool at the designated visitor parking and walk to your campsite.”

The landlord further referenced section #18 (G), Explanatory Notes which states, “HRVC at its sole discretion reserves the right to remove or relocate a Guest at any time.”

The landlord referenced page 3 of the respondent evidence package site showing a spreadsheet which shows the payment history for the tenant/site which shows a per day rate for rental of the site. The landlord stated that the tenants started residing at the park since August 2021 for approximately 3 months. The landlord also referred to page 4 of the respondent evidence package which shows receipts for payment.

The landlord referenced page 5 of the respondent evidence which is a typed letter dated November 25, 2021 re: Notice to Vacate- Emergency. Both parties confirmed the landlord served this notice to the tenant regarding flooding in the area.

The landlord also referred to page 7 of the respondent evidence package to is a business license from the local municipality which shows that the named landlord's license is for “Tourist Trailer Park/Campsite” only.

The tenants have stated that they were never provided with a copy of the agreement referenced by the landlord. The tenants stated that they were paying their electricity separately.

Residential Tenancy Branch Policy Guideline #9, Tenancy Agreements and License to Occupy states in part,

This policy guideline clarifies the factors that distinguish a tenancy agreement from a licence to occupy.

A. LEGISLATIVE FRAMEWORK

Tenancy agreement is defined in the Residential Tenancy Act (RTA) as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Tenancy agreement is defined in the Manufactured Home Park Tenancy Act (MHPTA), as 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. It does not include a licence to occupy.

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

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

B. TENANCY AGREEMENTS

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.*

C. LICENCES TO OCCUPY

Under a licence to occupy, a person is given permission to use a rental unit or site, but that permission may be revoked at any time. The Branch does not have the authority

under the MHPTA to determine disputes regarding licences to occupy.

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;*
- C. The tenant has added permanent features such as a deck, carport or skirting which the landlord has explicitly or implicitly permitted;*
- D. 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.*

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

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.”

In this case, the landlord has argued that the Residential Tenancy Branch does not have jurisdiction as this is a license to occupy. The landlord has referenced the submitted documentary evidence that rent is charged at a daily rate; utilities are included at no extra charge with the exception of electrical consumption; the agreement provides that the tenant may be evicted without reason; the agreement has been in place for only 3 months; and there are restrictions on visitor hours. The tenants made no arguments against these points. I note that the landlord also referenced a business license from the local municipality which states that the property is to be used for a “Tourist Trailer Park/Campsite”. I find that in the absence of any other evidence that the landlord has established on a balance of probabilities that this is a license to occupy and that the Residential Tenancy Branch does not have jurisdiction. As such, this application is dismissed for lack 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 *Manufactured Home Park Tenancy Act*.

Dated: January 13, 2022