Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenants on June 20, 2021 under the *Residential Tenancy Act* (*RTA*) However, as set out in the Preliminary Matters section below, during the hearing I determined that it is the *Manufactured Home Park Tenancy Act* (*MHPTA*) that applies to the tenancy. In the Application the Tenants sought:

- Compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenants, who provided affirmed testimony. Neither the Landlord nor an agent for the Landlord attended. The Tenants were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application, the Notice of Hearing, and the documentary evidence to be relied on by the applicant(s) at the hearing. As neither the Landlord nor an agent for the Landlord attended the hearing, I confirmed service of these documents as explained below.

The Tenants testified that the Application and the Notice of Hearing were sent to the Landlord by email at the pre-agreed email address for service on July 15, 2021. The Tenants stated that the Landlord also confirmed this email as an email address for service at a previous hearing with the Residential Tenancy Branch (the Branch) on

May 11, 2021, and provided me with the file number for that hearing. The Tenants stated that they re-sent the email on July 17, 2021, an included the documentary evidence before me, but the Landlord never responded to either email.

I have reviewed the file for the previous hearing on May 11, 2021, and note that the Landlord's email address was listed in the Application and that the decision for that hearing was sent to the Landlord by the Branch by email at that email address. Based on the above, and as there is no evidence before me to the contrary, I accept the Tenants' affirmed testimony that they sent the Landlord the Notice of Dispute Resolution Proceeding Package, at a pre-agreed email address for service, on July 15, 2021, and again on July 17, 2021, and that the documentary evidence before me from the Tenants was served in the same manner on July 17, 2021. As a result, I find that the Landlord was deemed served with the Notice of Dispute Resolution Proceeding Package on July 18, 2021, and the documentary evidence on July 20, 2021, in accordance with sections 81(j) and 82(1)(f) the *MHPTA*, sections 59(1), 59(2), and 60 of the *Manufactured Home Park Tenancy Regulation* (regulation), and the Rules of Procedure.

Branch records indicate that the Notice of Dispute Resolution Proceeding Package was made available to the Tenants on July 13, 2021. As I am satisfied that the Notice of Dispute Resolution Proceeding Package was sent to the Landlord on July 15, 2021, I therefore find that the Tenants complied with the service timelines set out under section 52(3) of the *MHPTA* and rule 3.1 of the Rules of Procedure.

I confirmed that the hearing details shown in the Notice of Hearing were correct and I note that the Tenants had no difficulty attending the hearing on time using this information. Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. Based on the above and as there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled, despite the absence of the Landlord or an agent acting on their behalf.

The participants were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The participants were asked to refrain from speaking over myself and one another and to hold their questions and responses until it was their opportunity to speak. The

participants were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the *MHPTA* and Rules of Procedure; however, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Tenants, copies of the decision and any orders issued in their favor will be emailed to them at the email address for the primary Tenant provided in the Application.

Preliminary Matters

At the outset of the hearing, I identified that a written tenancy agreement had not been submitted for my review and consideration and that based on the documentary evidence before me from the Tenants, I was concerned that the *RTA*, which the Tenants had filed their Application under, may not apply.

The Tenants stated that there was no written tenancy agreement and that their agreement with the Landlord had been verbal. The Tenants stated that they had rented 5 acres from the Landlord upon which to put their own trailer, which was their only residence. The Tenants stated that the month-to-month tenancy began on approximately April 29, 2019, and that $600.00 in rent was due on the first day of each month for rental of the site. The Tenants stated that although there were initially no services provided, the Landlord had a tapped well installed in a common area of the property and the Tenants installed their own outhouse with the Landlords consent. The Tenants stated that there were also several other sites on the property, all owned by the Landlord, although they were not regularly in use.

The *RTA* defines a tenancy as a tenant's right to possession of a rental unit under a tenancy agreement and a rental unit as living accommodation rented or intended to be rented to a tenant. As the Tenants agreed that they did not rent living accommodation from the Landlord, but rather land or a site upon which to put their own living accommodation (a trailer), I find that there was no tenancy agreement under the *RTA* and therefore the *RTA* does not apply. Having made this finding, I will now turn my mind to whether the *MHPTA* Applies.

The *MHPTA* defines a tenancy agreement 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 defines a tenancy as a tenant's right of possession of a manufactured home site under a tenancy agreement and a manufactured home site as a site in a manufactured home park, which is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home. Further to this, the *MHPTA* defines a manufactured home park as a 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. Finally, it defines a manufactured home 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 or another by being towed or carried, and used or intended to be used for living accommodation.

Based on the affirmed and uncontested testimony of the Tenants and the photographs and videos of the site, I am satisfied that the trailer belonging to the Tenants meets the definition of a manufactured home. In assessing whether or not the location rented to the Tenants was in fact a manufactured home site in a manufactured home park, I will turn to the *MHPTA*, the testimony and documentary evidence of the Tenants, and Residential Tenancy Policy Guideline (Policy Guideline) #9, which deals with differentiating licences to occupy from tenancy agreements. As the Tenants stated that their trailer is their only residence, that they lived in their trailer on the site full-time and year-round between April 29, 2019 – February 16, 2021, and their photographs and videos establish to my satisfaction that the Tenants added more permanent features such as sheds, an outhouse, fencing and a large garden, I am satisfied that the Tenants rented the site as a place for their primary residence, not for short-term vacation or recreational use.

Based on the above, I am satisfied on a balance of probabilities that the location rented to the Tenant by the Landlord was a manufactured home site under the MHPTA and that a tenancy under the *MHPTA* existed between the parties. I therefore amended the Application to reflect the correct Act and proceeded with the hearing of the Application under the *MHPTA* rather than the *RTA*.

Issue(s) to be Decided

Are the Tenants entitled to compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The Tenants stated that the month-to-month tenancy began on approximately April 29, 2019, that $600.00 in rent was due on the first day of each month for rental of the site, and that the tenancy ended on February 16, 2021, when they vacated the site after having been served with a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice).

The Tenants stated that after a dispute with the Landlord over text message on February 5, 2021, regarding whether or not the Tenants were permitted to plow snow from the driveway, the Landlord first told them via text that they were ending the tenancy, then served them with the Two Month Notice by posting it to the door of their trailer later that day.

The Two Month Notice (RTB-32) in the documentary evidence before me states that it relates to sections 49 and 49.1 of the *RTA* and appears to be the most updated version of the form, which was created in January of 2021. The Two Month Notice contains the street address of the manufactured home site, but not a site number or other identifier. Although the Landlord's name is typed into the form twice, there is no signature of the Landlord, and the form is dated February 5, 2021. The effective date stated on the form is April 30, 2021, and the reason given for ending the tenancy is because the rental unit will be occupied by the landlord or the landlord's spouse.

The Tenants stated that they do not believe the Landlord served the Two Month Notice in good faith, as the Landlord appears to have sought to end the tenancy as a result of the disagreement regarding whether the driveway could be plowed, and never occupied the site after they vacated it. The Tenants submitted copies of text messages, photographs and videos of the site, and screen shots of the property listing in support of this position. Further to this, the Tenants stated that the Landlord placed the property on which the site was located for sale in August of 2021, and subsequently sold it.

The Tenants stated that although they initially disputed the Two Month Notice by filing an Application for Dispute Resolution with the Branch, they ultimately vacated the rental unit as a result of the Two Month Notice on February 16, 2021, prior to their hearing date of May 11, 2021. As a result, the Tenants stated that at the hearing, the arbitrator dismissed their Application seeking cancellation of the Two Month Notice without leave to reapply, and dismissed their monetary claim for compensation related to the Two Month Notice with leave to reapply, as they found that it was premature.

The Tenants stated that as the Landlord sold the manufactured home site without ever having occupied it after issuance of the Two Month Notice, they should be entitled to $7,200.00 in compensation, which represents 12 times their monthly rent. Although the Tenants initially sought this compensation under section 51(2) of the *RTA*, after learning at the hearing that it is the *MHPTA* that applies to the tenancy, and not the *RTA*, they made arguments that the equivalent section(s) of the *MHPTA* and regulation should therefore apply instead.

In the alternative, the Tenants stated that they should be entitled to the $7,200.00 in compensation sought pursuant to section 7 of the *MHPTA*, as the Landlord appears to have served them with a notice to end tenancy which they now believe to be invalid, as it was issued under the *RTA*, not the *MHPTA*, and they suffered significant emotional distress and financial hardship as a result of their compliance with it.

The Tenants stated that they were unable to find a comparable manufactured home site for rent, and have ended up in a significantly less ideal living situation as a result. The Tenants stated that it was extremely emotionally stressful having to move on such short notice, in the middle of winter, during a housing crisis, due to a notice to end tenancy which they now believe was both issued without a good faith intention on the part of the Landlord and under the wrong Act. The Tenants stated that further to this, they do not think that the notice to end tenancy was completed correctly, and that they suffered wage losses and had to leave behind things such as $1,000.00+ in garden plants covered by snow, fencing, and wood structures such as a woodshed and compost, when they vacated the property as a result of the notice to end tenancy, which they now believe to have been invalidly issued.

Finally, the Tenants sought recovery of the $100.00 filing fee. Although the teleconference remained open during the entire duration of the 43 minute hearing, neither the Landlord nor an agent acting on their behalf attended the hearing to provide any evidence or testimony for my consideration.

Analysis

As set out in the preliminary matters section of this decision, I am satisfied that a tenancy to which the *MHPTA* applies existed between the parties. As there is no evidence before me to the contrary, I also accept the Tenants' affirmed testimony that rent in the amount of $600.00 per month was due under the tenancy agreement for rental of the manufactured home site.

The Tenants initially sought compensation under section 51(2) of the *RTA*, which states that a tenant who receives a notice to end a tenancy under section 49 is entitled to compensation from their landlord in an amount equivalent of 12 times the monthly rent payable under the tenancy agreement, if the landlord cannot establish that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice and that the rental unit, except in respect of the purpose specified in section 49(6)(a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Although I am satisfied that the Landlord served the Tenants with a Two Month Notice stating that the Landlord was ending the tenancy pursuant to section 49(3) of the *RTA* because they or their spouse intended to occupy the rental unit, I have already found in the preliminary matters section of this decision that the *RTA* does not apply to this tenancy as it was a manufactured home site, and not a rental unit, that was rented to the Tenants by the Landlord. As a result, I find that section 51(3) of the *RTA* does not apply, despite the fact that the Landlord served the Tenants with a notice to end tenancy intended only for use for tenancies to which the *RTA* applies.

At the hearing the Tenants argued that if the *RTA* does not apply, the sections of the *MHPTA* related to compensation for tenants who have been served with a notice to end tenancy for landlord's use under the *MHPTA* should apply. For the following reasons, I disagree.

Sections 44(2) and 89(2)(q.2) of the *MHPTA* and section 33.1(2) of the regulation state that where a tenant has been served with a notice to end tenancy pursuant to section 42 of the *MHPTA*, the landlord must pay the tenant the greater of $5,000.00 or the equivalent of 12 months rent payable under the tenancy agreement if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 42 within a reasonable period after the effective date of the notice. However, I find that section 42 of the *MHPTA* is not the direct equivalent to section 49 of the *RTA* and does

not allow landlords to end tenancies for the same purposes or with the same amount of notice.

Section 42(1) of the *MHPTA* states a landlord may end a tenancy agreement by giving notice to end the tenancy agreement if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert all or a significant part of the manufactured home park to a non-residential use or a residential use other than a manufactured home park. It also requires, by way of section 44(1) of the *MHPTA* and section 33.1 of the regulation, that landlords provide tenants to whom a notice under this section relates, compensation in the amount of $20,000.00. Finally, section 42(2) of the *MHPTA* states that a notice to end tenancy under this section must end the tenancy on a date that is not earlier than 12 months after the date the notice is received and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the documentary evidence and testimony before me from the Tenants, I am satisfied that the Tenants were not served with a 12 Month Notice to End Tenancy For Conversion of Manufactured Home Park (RTB-31), pursuant to section 42 of the *MHPTA*. As I find that compensation under section 44 is directly contingent upon service of a 12 Month Notice to End Tenancy For Conversion of Manufactured Home Park (RTB-31), which I am not satisfied was ever served on the Tenants, I therefore find that they are not entitled to any compensation under section 44 of the *MHPTA*. Having made this finding, I will now turn my mind to the Tenants' claim for compensation under section 7 of the *MHPTA*.

Section 7 of the *MHPTA* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. However, it also states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The Tenants' claim for compensation under section 7 was predicated on their argument that they complied with a notice to end tenancy which they now believe to be invalid for the following reasons:

- It was not served in good faith;
- It was served under section 49 of the *RTA*, which does not apply to their tenancy; and
- It was not completed correctly, as it was not signed.

I acknowledge that the Two Month Notice, which I am satisfied was served on the Tenants on February 5, 2021, does not comply with the form and content requirements of either the *RTA* or the *MHPTA*, as it was not signed. However, I find that the Two Month Notice was not enforceable against the Tenants in the first place, as it was issued pursuant to the *RTA*, which did not apply to them or their tenancy. Further to this, I find that the Tenants even availed themselves of the legislative remedy available to them for disputing the validity of the Two Month Notice, by filing an Application for Dispute Resolution with the Branch seeking its cancellation. However, testimony of the Tenants at the hearing and a review of the decision relating to their Application for Dispute Resolution seeking cancellation of the Two Month Notice satisfies me that rather than waiting for the hearing to determine whether or not the Two Month Notice was valid and enforceable, the Tenants vacated the manufactured home site on February 16, 2021. As a result, I am satisfied that the Tenants therefore voluntarily vacated the manufacture home site despite the fact that there was no legal obligation under the *MHPTA* for them to have done so.

While I acknowledge that the Tenants may have believed the Two Month Notice to be valid at the time they vacated the rental unit, and that they may have therefore vacated the manufactured home site as a result, which is unfortunate, I find that their mistaken belief does not give rise to a claim for compensation under section 7 of the *MHPTA*, or in any way wave or reduce the Tenants' obligations to be aware of their own rights and obligations under the *MHPTA*, including their right to dispute a notice to end tenancy they believed not to be valid and to be aware of the ways in which the Landlord was and was not entitled to end their tenancy under the *MHPTA*. Further to this, I am not satisfied based on the evidence and testimony before me, that the Landlord's issuance of the Two Month Notice (RTB-32) rather than the 12 Month Notice (RTB-31), was an intentional attempt to avoid obligations under the *MHPTA*, rather than the result of a mistake and/or a misunderstanding regarding whether the *RTA* or the *MHPTA* applied, as not even the Tenants appeared aware prior to the hearing, that the *RTA* did not apply. As a result, I am not satisfied that there was a breach of the *MHPTA* on the part of the Landlord with regards to issuance of the Two Month Notice.

As a result, I find that the Tenants are therefore not entitled to any compensation pursuant to section 7 of the *MHPTA* as I find that the losses claimed by them under section 7 resulted form their decision to voluntarily vacate the manufactured home site without any legal obligation under the *MHPTA* to do so, rather than a breach of the *MHPTA* by the Landlord. Finally, I am also satisfied that if the Tenants had waited for the scheduled hearing of their Application for Dispute Resolution seeking cancellation of the Two Month Notice and a decision from the Branch regarding the validity and

enforceability of the Two Month Notice, the Tenants would more likely than not have made a different choice with regards to vacating the rental unit. However, the Tenants chose not to wait for the hearing or a decision regarding the validity of the Two Month Notice before vacating the manufactured home site and I therefore find that their own actions and decisions resulted in the losses suffered.

As the Tenants were not successful in their Application, I decline to grant them recovery of the filing fee.

Conclusion

I dismiss the Tenants' Application, 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: January 21, 2022

Residential Tenancy Branch