Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, OLC, DRI, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Applicant on October 18, 2021 (the "Application"). The Applicant applied as follows:

- To suspend or set conditions on the landlord's right to enter the rental unit or site
- For an order that the landlord comply with the Act, regulation and/or the tenancy agreement
- To dispute a rent increase that is above the amount allowed by law
- For compensation for monetary loss or other money owed

The Applicant appeared at the hearing. S.L. and G.M. appeared at the hearing for the Respondent. Legal Counsel for the Respondent appeared at the hearing late.

The parties agreed the Applicant vacated the site January 31, 2022.

The Applicant proceeded with their dispute of a rent increase and withdrew the remaining requests.

I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

Legal Counsel confirmed receipt of the hearing package. Legal Counsel, S.L. and G.M. advised that the Respondent did not receive evidence from the Applicant. The Applicant testified that their evidence was served on the Respondent with the hearing package but could not point to further evidence showing this.

I told the parties I was not satisfied the Applicant's evidence was served on the Respondent as required by rule 3.14 of the Rules and I heard the parties on whether the evidence should be admitted or excluded pursuant to rule 3.17 of the Rules. The parties agreed the evidence should be excluded and therefore it is excluded.

The Applicant confirmed receipt of the Respondent's evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony and submissions of the parties as well as the admissible documentary evidence. I have only referred to the evidence I find relevant in this decision.

Preliminary Issue – Jurisdiction

A preliminary issue arose in relation to whether the *Manufactured Home Park Tenancy Act* (the "*Act*") applies to the parties. The Applicant took the position that the *Act* does apply. The Respondent took the position that the *Act* does not apply.

Legal Counsel for the Respondent submitted that the *Act* does not apply for two reasons. First, the site is on reserve lands as described at page 1 of RTB Policy Guideline 27. Second, there was no tenancy agreement between the parties, it was a license to occupy as defined in RTB Policy Guideline 09.

Legal Counsel provided the following submissions. The Applicant had a fifth wheel trailer on the site. There was no skirting around the trailer. The trailer was not on the site for permanent use. The Applicant came into the resort through a booking shown at page 35 of the Respondent's materials which shows that the Applicant had a permanent residence outside the park. The booking included a permanent address elsewhere and there was no indication this was going to be a permanent residence. The resort has water and power hook ups; however, the water hook ups are not frost free. The site had a tap that the Applicant attached their water line to. There was no intention that the site would be used as a permanent residence. The fifth wheel trailer was attached to a truck and moved from the resort.

The Applicant testified as follows. They did not complete the document at page 35 of the Respondent's materials, this was completed by the Respondent's office staff. They agree they had a recreational vehicle on the site. The recreational vehicle could be moved by a truck but so can a mobile home. The site was their permanent address and they had no other residence at the relevant times. They resided at the site all year round. They had a conversation with staff at the Respondent's office at the start of their stay during which they requested a permanent site and were placed on a list for one. The site they were initially given was not meant to be permanent. They moved during their stay from a temporary site to a seasonal site and stayed there for 18 months. They were never moved to a permanent site despite several attempts to be moved. The recreational vehicle and site were their permanent residence. They paid rent monthly. The recreational vehicle was connected to a frost free connection. The Respondent provided notice to enter the site through email when necessary. There were no limits on visitation to the site. They were not provided any documentation stating this was a licence to occupy. The Respondent's policies require 30 days notice to vacate the site.

The Respondent submitted documentary evidence including an agreement reached between the parties, an account statement, emails between the parties, photos of the recreational vehicle and empty site and booking details in relation to the Applicant.

Policy Guideline 09 addresses tenancy agreements and licences to occupy and states as follows:

> B. TENANCY AGREEMENTS
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> 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:
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> - 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;
- 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

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.

The Applicant has the onus to prove that a tenancy agreement governed by the *Act* existed between the parties.

I find this was a license to occupy and not a tenancy agreement governed by the *Act* for the following reasons.

There is nothing in the documentation provided that resembles a written tenancy agreement between the parties.

I find based on the account statement that the Applicant did not pay a fixed amount of rent during their stay at the park. Further, I find the Applicant paid tax in addition to the monthly fee. These factors point to this being a licence to occupy and not a tenancy agreement governed by the *Act*.

I do not find any compelling evidence before me to support that the parties intended or understood this to be a tenancy agreement governed by the *Act*. Based on the Respondent's evidence as a whole, I find the Respondent never indicated an intention to enter into a tenancy agreement with the Applicant. Further, the Respondent disputed that there was a tenancy agreement between the parties (page 31, 42 and 45 of Respondent's materials). As well, the Respondent showed a clear intention and understanding that the Applicant's stay was temporary (page 39 and 41 of Respondent's materials).

I find the intention of the parties is further shown by the guest details and booking confirmation at page 35 to 37 of the Respondent's materials. I find the Applicant provided their address, email address and phone number shown in the guest details at page 35 of the Respondent's materials because this is personal information that the Respondent could not have otherwise known. I find the Applicant provided an address other than the site address as their contact address. I find the Applicant entered the park through a booking system based on the document at page 36 and 37 of the Respondent's materials. I note that the booking is referred to as a reservation. I note again that the monthly rate included tax. I note that the reservation includes an arrival date and departure date. I note that the booking includes cancellation policies and deposit policies which are inconsistent with the *Act*. I find that all of these factors point to this being a licence to occupy and not a tenancy agreement governed by the *Act*.

I find the nature of the Applicant's stay in the park was transitory for the following reasons. The Applicant had a recreational vehicle on the site which is more easily

moved than a mobile home. The Applicant acknowledges that they requested a permanent site and were placed on a list for one which supports that the parties did not intend the stay to be permanent. The Applicant acknowledged that they moved sites during their stay which supports that this was not intended to be a permanent occupation of the original site. The Applicant acknowledged they were in a seasonal site. The definition of "seasonal" is "relating to or characteristic of a particular season of the year" and "fluctuating or restricted according to the season or time of year." Clearly being in a seasonal site was not a permanent arrangement. The Applicant acknowledged they were never moved to a permanent site despite their requests to be moved which again indicates that the Respondent did not intend or understand this to be a permanent living situation. Further, the Applicant should have known it was not meant to be a permanent living situation given they were in a seasonal site, were on the list for a permanent site and were never moved to a permanent site.

The emails from the Applicant in evidence support that this was not a tenancy agreement governed by the *Act* because the Applicant asked to extend their stay in the seasonal area for six months, a discussion that would not occur in a tenancy (page 28 of the Respondent's materials).

The emails from the Respondent at page 39 and 41 of the materials support that this was not meant to be a tenancy governed by the *Act* or permanent stay. An employee of the Respondent specifically notes in the emails that the site the Applicant is in is seasonal and meant for people only staying five to six months. The employee also notes that whether people can stay longer in the park is changing day to day. Further, the email at page 41 of the materials specifically states that the Respondent cannot provide another seasonal site after October 01, 2020 and that the Applicant will have to leave the park for a season at that point. The same email also notes that the Applicant is on the "Year Round Waitlist" and that "if anything comes up" they will contact the Applicant. All of these communications show an intention and understanding that this was not a permanent living situation.

I have reviewed the two photos submitted of the recreational vehicle on the site and the empty site and do not see any compelling indicators of permanence or permanent features.

I understand from the materials that the Applicant entered the park in January of 2019. The parties came to an agreement that the Applicant would vacate September 30, 2021, less than three years later. Further, the Applicant moved within the park within

this time period. I do not find this to be a situation where the recreational vehicle had not been moved for a "long time" as that term is used in Policy Guideline 09.

I again note the following section of Policy Guideline 09:

> 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.
>
> (emphasis added)

I find that the materials before me do not support that this was meant to be a permanent primary residence for the Applicant. I find that the materials as a whole show that this was meant to be a temporary stay in the park.

I have weighed all relevant factors and find this was a license to occupy and not a tenancy agreement governed by the *Act*. I find the *Act* does not apply and the RTB does not have jurisdiction to decide this matter. The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

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

Dated: March 02, 2022

Residential Tenancy Branch