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 FFT, OLC, MNDCT, DRI, OT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on February 17, 2020, under the *Manufactured Home Park Tenancy Act* (the *Act*), seeking:

- An order for the landlord to comply with the *Act*, regulation, or tenancy agreement;
- Compensation for monetary loss or other money owed;
- To dispute a rent increase;
- A finding that the act applies; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 A.M. (Pacific Time) on May 30, 2022, and was attended by the Tenant, the Tenant's advocate P.L., and two support persons/witnesses for the Tenant, L.M. and D.M. No one appeared on behalf of the Landlord. All testimony provided was affirmed. The parties and their agent(s) were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (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 parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The Parties 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.

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 intended to be relied on by the Applicant at the hearing. L.M. and D.M. stated that the Notice of Dispute Resolution Proceeding (NODRP) package, which includes a copy of the Application and the Notice Hearing, and most of the documentary evidence before me for consideration, were personally served on an agent for the Landlord with the first initial "B", by L.M. in the presence of D.M. on February 25, 2022. L.M. and D.M. stated that the remaining documentary evidence was personally served on the same agent for the Landlord on May 10, 2022, by L.M. in the presence of D.M. The advocate pointed to a letter from the agent confirming receipt of the above noted documents on February 25, 2022, and May 10, 2022, a copy of which was submitted for my review and consideration.

Records at the Branch indicate that the NODRP was made available for pick-up by the Tenant on February 24, 2022. based on the above, and in the absence of any evidence to the contrary, I therefore find that the NODRP and the majority of the documentary evidence before me for consideration was personally served on an agent for the Landlord on February 25, 2022, and that the remaining documentary evidence was personally served on an agent for the Landlord on May 10, 2022, in compliance with section 52(3) of the *Act* and rules 3.1 and 3.14 of the Rules of Procedure. Pursuant to rule 7.3 of the Rules of Procedure, the hearing therefore continued as scheduled despite the absence of the Landlord or an agent acting on their behalf.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Tenant, copies of the decision and any orders issued in their favor will be emailed to the advocate at the email addresses confirmed in the hearing.

Issue(s) to be Decided

Does the *Act* apply?

Is the Tenant entitled to an order for the landlord to comply with the *Act*, regulation, or tenancy agreement?

Is the Tenant entitled to compensation for monetary loss or other money owed?

Was the Tenant issued a rent increase contrary to the *Act*?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The Tenant resides in a fifth wheel trailer at a site in a campground. The Tenant and the advocate sought a decision that the fifth wheel trailer (trailer) is a manufactured home, that the site in which it is located is a manufactured home site (site), and that the portion of the campground where the site is located is a manufactured home park (Park) under the *Act*, and that therefore the *Act* applies.

The Tenant and the advocate stated that a verbal tenancy agreement exists between the Tenant and the Landlord, which commenced on October 1, 2011. The Tenant and the advocate stated that the Tenant has resided in the trailer at the same site in the long-term portion of the campground, which the Tenant and the advocate argued is a Park under the *Act*, continuously since that date, and that it is the Tenant's only residence. The Tenant and the advocate stated that the trailer has not been moved since October of 2011 and has many permanent features, such as a shed with a wood stove, washer, and dryer, which the Landlord explicitly permitted.

In support of their argument that the *Act* applies, the advocate pointed to several previous decisions from the Residential Tenancy Branch (the Branch) regarding the campground named as the Landlord in the Application, in which it was determined that the campground and/or portions of the campground, is/are a Park under the *Act,* and therefore the *Act* applies to some of the tenancies at that campground. Copies of these previous decisions were submitted for my review and consideration. The advocate also pointed to 6 pages of written arguments and submissions, Residential Tenancy Policy Guideline (Policy Guideline) #9, Policy Guideline #20, a copy of the campground rules guide, a letter from a red seal certified plumber that the water connections provided by the campground have been designed to be frost resistant, photographs of the campground and site, and documents from the campground indicating that rent and fees are charged at a flat rate on a monthly basis.

The Tenant and the advocate stated that the Landlord improperly increased the rent and terminated services and facilities included in rent under the tenancy agreement without providing proper notice or compensation, contrary to the requirements of the

Act. The Tenant and the advocate stated the prior to the unlawful rent increase, rent was $505.00 per month, including cable, and was due on the 1st day of each month. The Tenant and the advocate stated that on February 26, 2020, the Tenant received a letter from the Landlord stating that rent would increase to $550.00 per month effective April 1, 2020, and that this amount would not include cable. The letter also stated that all existing cable boxes were to be returned by April 1, 2020, and that an additional $25.00 per month charge would apply to those wishing to obtain cable services through the Landlord. A copy of the letter was provided for my review and consideration.

The Tenant and the advocate argued that this letter does not constitute a proper notice of rent increase under the *Act* as the amount of the increase was greater than the allowable rent increase amount permitted under the *Act*, the proper form was not used, and the required amount of notice was not given. The Tenant stated that effective April 1, 2020, they paid $530.00 per month to the Landlord, $505.00 of which was for rent and $25.00 of which was for cable. The Tenant stated that as of July 1, 2020, they paid $550.00 per month to the Landlord, $525.00 of which was for rent and $25.00 of which was for cable. The Tenant sought an order from the branch that their previous rent amount of $505.00 be reinstated and that either cable be included in this cost by the Landlord as set out in the tenancy agreement, or that they receive a $25.00 per month rent reduction for the loss of cable services. Although the Tenant did not seek retroactive compensation for the loss of cable, they did seek retroactive recovery of the $20.00 per month which they state they have paid for an unlawful rent increase since July 2020. The Tenant also sought recovery of the $100.00 filing fee.

No one attended on behalf of the Landlord to provide any evidence or testimony for my consideration.

Analysis

Section 1 of the *Act* defines a manufactured home park as 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. It also defines 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. Finally, section 1 of the *Act* 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 to another by being towed or carried and, used or intended to be used as living accommodation.

Policy Guideline #9 differentiates tenancies from licenses to occupy as follows. It states that 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, and that 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 and the tenant pays a fixed amount for rent. In contrast Policy Guideline #9 states that under a license to occupy, a person is given permission to use a rental unit or site but that this permission may be revoked at anytime. Policy Guideline #9 also sets out a series of considerations that suggest that occupancy of a rental site or unit might be a tenancy rather than a license to occupy as follows:

- The home is hooked up to frost free services and facilities meant for permanent housing;
- 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; and
- The home has not been moved for a long time.

Policy Guideline #9 also sets out that while the *Act* is not intended to apply to seasonal campgrounds occupied by wheeled vehicles used as temporary accommodation, there are situations where a recreational vehicle (RV) may be a permanent home that is occupied for “long, continuous periods”.

At the hearing the Tenant and the advocate stated that the Tenant has exclusive possession of the site in which their trailer is located and that they pay a fixed amount for rent. In support of this testimony, records showing that fixed amounts of rent were due and paid were submitted. The Tenant and the advocate stated that the Tenant moved their trailer to the site in the long-term area of the campground in October of 2011 and has resided there since. They stated that the trailer, which they argue meets the definition of a manufactured home under section 1 of the *Act* as it is designed to be towed from one place or another and used as living accommodation, is the Tenant’s only residence, that they live there full-time, and that thee are many permanent features at the site, including an 8x12 foot porch which contains a wood stove and a washer and dryer that was explicitly permitted by the Landlord. Additionally, the Tenant and the advocate stated that the Trailer is hooked up to services and facilities meant for permanent housing such as a frost-free water line and sewer/septic services, and provided documentation from a red seal certified plumber to that effect.

Based on the above, and in the absence of any evidence to the contrary, I find that a tenancy to which the *Act* applies exists between the parties, as I am satisfied on a balance of probabilities that the trailer is a manufactured home under the *Act*, that the site in which the trailer is located is a manufactured home site under the *Act,* and that the portion of the campground where the Tenant resides, known as the long term area of the campground, is a manufactured home park under the *Act* in relation to this tenancy, pursuant to section 1 of the *Act* and Policy Guideline #9.

As a result, I find that the Landlord is therefore bound by the rent increase provisions set out under sections 35 and 36 of the *Act* and section 21 of the *Act* regarding the termination or restriction of services and facilities. Having reviewed the testimony and submissions from the Tenant and the advocate, as well as the notice given to the Tenant by the Landlord regarding the rent increase dated February 26, 2020, and the discontinuation of cable, I find that the notice does not comply with the form or notice period requirements set out under sections 35 and 36 of the *Act,* or the requirements regarding how much rent may be increased as set out under section 32(3) of the regulations. Further to this, I find that section 36.1(2) of the *Act* applies, as the notice increasing the rent was dated and received February 26, 2020, with an effective date of April 1, 2020, and therefore it is of no force and effect.

Based on the above I find that the Tenant's base rent was not properly increased by the Landlord under the *Act* from $505.00 per month to $525.00, and that the Landlord therefore collected $20.00 per month from the Tenant contrary to the *Act* and the regulation, between July 2020 – June 2022. As a result, and pursuant to section 60 of the *Act*, I therefore find that the Tenant is entitled to monetary compensation in the amount of $480.00 for recovery of the amounts overpaid in rent during the above noted time period. If the Tenant has subsequently paid the additional $20.00 in rent for July of 2022, the Tenant is entitled to deduct this additional $20.00 from the next months rent payable under the tenancy agreement.

Section 21(2) of the *Act* states that a landlord may terminate or restrict a service or facility, other than one referred to in subsection 1, if the landlord gives 30 days written Notice, in the approved form, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. The Tenant provided affirmed and uncontested testimony that their original rent amount included cable under their tenancy agreement. As a result, and in the absence of any evidence to the contrary, I accept this as fact. Based on the documentary evidence and testimony before me for consideration, I am

satisfied that even though the Landlord gave at least 30 days written notice for termination of cable services, they did not reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination of cable, and in fact began charging the Tenant an additional $25.00 per month for cable services. As a result, I grant the Tenant's request for an ongoing rent reduction in the amount of $25.00 per month, for the loss of cable services. Based on the above, and as the tenant explicitly stated that they were not seeking retroactive compensation for loss of cable services, I find that the Tenant's rent shall be $480.00 per month ($505.00, less $25.00), effective July 1, 2022, provided the Tenant has cancelled and/or is no longer receiving, cable service from the Landlord.

As the Tenant was successful in the Application, I also grant them recovery of the $100.00 filing fee pursuant to section 65(1) of the *Act*. Pursuant to section 60 of the *Act* I therefore grant the Tenant a Monetary Order in the amount of $605.00 ($480.00 for rent overpayment, $25.00 for the loss of cable services for July 2022, and $100.00 for recovery of the filing fee), and I order the Landlord to pay this amount to the Tenant. Pursuant to section 58(1)(c)(ii), I also order that the Tenant may deduct $20.00 from the next months rent payable under the tenancy agreement, if they have already paid the additional $20.00 in rent previously unlawfully requested and collected by the Landlord, for July 2022.

Conclusion

I find that the Tenant's rent continued to be $505.0 per month between April 1, 2020, and July 31, 2022, and that rent is decreased to $480.00 effective August 1, 2022.

Pursuant to section 60 of the *Act*, I grant the Tenant a Monetary Order in the amount of **$605.00**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. In lieu of serving and enforcing this Monetary Order, and pursuant to section 58(1)(c)(ii), may deduct this amount from the next months rent payable under the tenancy agreement, or subsequent months, if necessary, should they wish to do so.

Pursuant to section 58(1)(c)(ii), I also order that the Tenant may deduct $20.00 from the next months rent payable under the tenancy agreement, if they have already paid the

additional $20.00 in rent previously unlawfully requested and collected by the Landlord, for July 2022.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated order, nor my authority to render them, are affected by the fact that this decision and the associated order were issued more than 30 days after the close of the proceedings.

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: July 7, 2022

Residential Tenancy Branch