Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, MNDCT, LRE, OLC, FFT

Introduction

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

- a determination regarding their dispute of a rent increase by the landlord pursuant to section 36;
- the cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 39;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 55;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $150 pursuant to section 60;
- an order to suspend or set conditions on the landlord's right to enter the manufactured home site pursuant to section 55; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 65.

This matter was reconvened from a prior hearing on March 18, 2022. I issued an interim decision setting out the reasons for the adjournment on that same date (the "**Interim Decision**"). This decision should be read in conjunction with Interim Decision.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:45 am in order to enable the landlord to call into the hearing scheduled to start at 11:00 am. The tenant attended the hearing. He was assisted by KK and ML. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that the tenant, KK, ML, and I were the only ones who had called into the hearing.

In the Interim Decision, I ordered that the tenant may serve an additional piece of documentary evidence on the Residential Tenancy Branch (the "**RTB**") and the landlord. The tenant submitted this document to the RTB. The tenant and his assistants testified that they were unsure if they served this document on the landlord. As such, I exclude the document from evidence. The tenant and his assistants were permitted to give oral testimony as to the document's contents.

In the Interim Decision, I ordered the landlord to serve the tenant with copies of its documentary evidence no later than 14 prior to this hearing. The tenant and KK testified that they did not receive any documentary evidence from the landlord. As such, I exclude these documents from evidence.

However, in preparing for this hearing, I reviewed the landlord's documents (which were provided to the RTB), and noted that the landlord takes the position that a tenancy agreement does not exist between the parties, and instead their contractual relationship should be characterized as a "license to occupy". I mentioned this to the tenant, and he stated that this was the first time he had heard the landlord make such an argument.

The Act does not apply to licenses to occupy. As such, despite not providing its documentary evidence to the tenant and despite not attending the hearing, I must address the issue of jurisdiction raised by the landlord.

Preliminary Issue – Jurisdiction

RTB Policy Guideline 9 states:

> **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 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;
- 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.

The tenant testified that he rents a "pad" from the landlord. He testified that he has rented this path since 2010 and that he occupies it as his sole place of residence. He pays rent monthly, and is charged GST on his rent payments. He parks a fifth wheel recreational vehicle on the pad, and is provided with hydro, water and sewage lines by the landlord. He has built wooden stairs, with a railing, on the pad which allowed him to gain easier access into the fifth wheel. He did not say precisely when these stairs were built, or if he had the landlord's permission but he did say that he built them do too "shattering" his hip and that he shattered his hip "a long time ago".

The tenant testified that he does not share the rented pad with any other occupant of the RV park and that he is not supposed to share it with the landlord either. However, he testified that one of the landlord's managers will "snoop" around the RV, looking under it from time to time. Additionally, he testified that this manager goes through the garbage cans located on the pad to collect empty bottles.

Based on the undisputed testimony of the tenant, I find that he lives on the pad on a full time basis, and that it is his primary residence and has been for many years. I find that it has a permanent feature of wooden stairs on it, which the landlord has tacitly permitted to be built. I find that the tenant has sole use of the pad, as I cannot find that any license to

occupy agreement between the landlord and the tenant would give the landlord the authority to go through the tennis garbage, or pier under the RV.

I acknowledge that GST is charged on the tenants monthly rent, and that this suggests that the arrangement is a license to occupy. However this fact is outweighed by the previous factors listed, all of which wait in favor of a finding that the parties are in a tenancy relationship.

As such, I find that the parties are in a tenancy relationship and that the Act applies. I therefore have jurisdiction to adjudicate this dispute.

Issues to be Decided

Is the tenant entitled to:

1) an order cancelling the Notice;
2) a monetary order of $150;
3) an order that the landlords comply with the Act;
4) an order to suspend or set conditions on the landlord's right to enter the manufactured home site;
5) the cancellation of a rent increase; and
6) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the tenant and his representatives, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the their claims and my findings are set out below.

The tenant testified that he moved onto the manufactured home site (the "Site" or the "Pad") approximately 12 years ago. He could not remember the exact date, but testified it was right after his mother passed away. He testified that monthly rent currently $866.25 including GST.

On October 1, 2021, the tenant received a letter from the landlord stating:

> Due to the rising property taxes, this notice is to inform you that beginning January 1, 2022 the monthly rate for [the Site] will increase from $765 + GST= $803.25 to $825 + GST = $866.25 per month plus any applicable parking or storage fees.
>
> If you wish your tenancy to continue, the new monthly rental payment of $866.25 is required. Please be advised that all other terms as per park rules remain in effect.

The tenant testified that he actually paid $908.25 (including GST) for January, February, and March 2022. He provided debit receipts from the landlord showing that he paid this amount for those months.

He testified that he paid this additional amount because there was a fire in his RV, and he had to stay with another occupant of the manufactured Home Park for these months. He testified that the landlord charged him $150 the time he was living with his neighbor, in addition to the rent do for the Pad.

The tenant purchased a new RV and returned to living on the Site in April 2022. He testified that the landlord lowered the rent to $866.25 (including GST) starting April 1, 2022, which he has paid since.

The tenant argued that the increase in monthly rent from $803.25 to $866.25 amounts to an increase of 7.8%, which exceeds the amount the landlord is permitted to raise rent by pursuant to the *Manufactured Home Park Regulation* (the "**Regulation**").

The tenant seeks to have this increase cancelled, and the overpayment of rent for January to June 2022 returned.

On December 22, 2021, the landlord delivered the tenant a letter labeled "eviction notice". The landlord wrote:

> As per the previous conversation you had with her manager, we are requesting that you vacate the premises no later than January 1, 2022 by 12:00 PM and the reasons are these:
>
> - Receipt of numerous complaints from customers regarding hostile and aggressive behavior and vulgarity which resulted in two customers leaving the park.
> - History of being drunk and disorderly on premises on more than one occasion
> - History of exhibiting aggressive and hostile behavior towards park staff
> - Use of portable heaters which are prohibited by park rules
> - Failure to have RV insurance
>
> Although we are glad that you were not injured in the fire on Tuesday, December 14, 2021, the potential damage is incomprehensible. We rely on the integrity of our customers to have and maintain RV insurance while with us.
>
> Please note that we will not refund your deposit until you remove all of your personal belongings at checkout time.

The tenant testified that following the fire, the landlord's manager entered the Site and removed wires from the burned RV which the tenant alleged were the cause of the fire.

He testified that throughout the course of the tenancy this manager would “wander through everyone’s place” and that he frequently opens and rummages through garbage cans located on the Site and the dumpster located in the park’s common area, looking for empty bottles.

The tenant stated that he has caught this manager “snooping” around his site, and peering under the RV, where the tenant stores many of his belongings. The tenant testified that many of these belongings have later been stolen. The tenant did not explicitly accuse the manager of stealing these objects, but rather implied that this activity was suspicious.

Analysis

1. Rent increase

Section 35(3) and 36(1) of the Act states:

> **Timing and notice of rent increases**
> 35(3) A notice of a rent increase must be in the approved form.
>
> **Amount of rent increase**
> 36(1) A landlord may impose a rent increase only up to the amount
> (a) calculated in accordance with the regulations,
> (b) ordered by the director on an application under subsection (3), or
> (c) agreed to by the tenant in writing.

Section 32(3) of the Regulation states:

> **Rent increase**
> 32(3) For the purposes of section 36 (1) (a) of the Act, in relation to a rent increase with an effective date on or after January 1, 2019, a landlord may impose a rent increase that is no greater than the amount calculated as follows:
>
> inflation rate + proportional amount.

The Regulation defines “proportional amount”:

> "**proportional amount**" means the sum of the change in local government levies and the change in utility fees divided by the number of manufactured home sites in the landlord's manufactured home park;

The landlord did not provide the tenant with notice of the rent increase in the approved form. Rather it was provided by way of dictate letter. Additionally, the landlord did not show how the amount of rent increase imposed met with the requirements set out in the Regulation. At the time the notice was issued, the inflation rate was 1.5%. I cannot say if

this amount, plus the "proportional amount" equals the amount of rent increase imposed.

As such, I find that the landlord has failed to comply with section 35 and 36 of the Act, and the rent increase imposed starting January 1, 2022 is invalid.

Additionally, there is no basis in the Act which allows the landlord to charge the tenant any amount for staying at another manufactured home site.

It may be that the landlord could charge the occupant of that manufactured home site an additional fee for having guests (this would depend on the wording of that occupant's tenancy agreement). However, this amount would be payable by the other occupant, and not by the tenant. As such, I find that the landlord was not entitled to increase the tenants rent by $150 for the month of January, February, or March 2022 because he resided with another occupant of the manufactured home park.

I order that the landlord return these amounts totaling $504 to the tenant, calculated as follows:

Date	Monthly rent owed	Monthly rent paid	Balance
Jan-22	$803.25	$908.25	-$105.00
Feb-22	$803.25	$908.25	-$210.00
Mar-22	$803.25	$908.25	-$315.00
Apr-22	$803.25	$866.25	-$378.00
May-22	$803.25	$866.25	-$441.00
Jun-22	$803.25	$866.25	-$504.00
		Total	**-$504.00**

2. Eviction

A landlord may end a tendency for cause pursuant to section 40 of the Act. This section requires that at least one month notice of the end of tenancy is given, and that the notice comply with the form and content requirements of section 45 of the Act.

Section 45 of the Act requires that a notice to end tenancy be in the approved form.

Based on the eviction letter entered into evidence, it would seem that the landlord is attempting to end the tenancy for cause. As such, the tenant was entitled to at least one month's notice (which he did not receive), and the landlord is required to use the correct RTB form (which it did not).

As such, I find that there is no basis upon which I may end the tenancy.

I order the tenancy to continue.

3. Restricting Landlord's Access

Section 23 of the Act states:

> **Landlord's right to enter manufactured home site restricted**
> 23 A landlord must not enter a manufactured home site that is subject to a tenancy agreement for any purpose unless one of the following applies:
> (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
> (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
> (i) the purpose for entering, which must be reasonable;
> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
> (c) the landlord has an order of the director authorizing the entry;
> (d) the tenant has abandoned the site;
> (e) an emergency exists and the entry is necessary to protect life or property;
> (f) the entry is for the purpose of collecting rent or giving or serving a document that under this Act must be given or served.

The landlord appears to have been operating on the understanding that the Act did not apply to the contractual relationship between itself and the tenant. As such, it may not have known that it needed to comply with this section if it wanted an agent to enter the residential property.

Now that I have made a finding that the Act applies to this contractual relationship, the landlord has notice that it must comply with this section of the Act. Accordingly, I will not make any order restricting the landlord's right of access to the site beyond what is stated in the Act. I do not find that landlords manager removing bottles from the tenant's garbage can, or a vague allegation of "snooping" warrants a restriction of the landlord's rights under the Act.

I order that the landlord comply with section 23 of the Act.

Pursuant to section 65(1) of the Act, as the tenant has been successful in the application, he may recover the filing fee from the landlord.

Conclusion

The landlord has not issued a valid notice to end tenancy. The tenancy shall continue.

I order that the rent increase issued by the landlord effective January 1, 2022, is invalid and of no force or effect. Monthly rent is $765 + GST.

Pursuant to sections 58 and 65 of the Act, I order that the landlord pay the tenant $604, representing the return of the overpayment of rent and reimbursement of the filing fee.

Pursuant to section 65(2) of the Act, the tenant may deduct $604 from one future month's rent, in full satisfaction of the monetary order made.

I order that the landlord comply with section 23 of the Act.

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: July 20, 2022

Residential Tenancy Branch