Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

The Applicant seeks an order for emergency repairs pursuant to s. 27 of the *Manufactured Home Park Tenancy Act* (the "*Act*"). The application was filed as an expedited hearing.

K.A. appeared as the Applicant Tenant. L.R. and C.R. appeared as the Respondent Landlords.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Applicant advised that she served her application and evidence on the Respondents by posting it to their door on June 22, 2022. The Respondents acknowledge receipt of the Applicant's application materials and raised no objections with respect to service. I find that pursuant to s. 64(2) of the *Act* the Respondents were sufficiently served with the Applicant's application materials based on its acknowledged receipt without objection.

The Respondents advise that their response evidence was posted to the Applicant's door, though could not recall the date. The Applicant acknowledges receiving a notice from the Residential Tenancy Branch indicating that Respondents had uploaded evidence. The Respondents confirmed they served this and appeared to believe that that was sufficient service.

Rule 3.16 of the Rules of Procedure requires respondents to demonstrate service of their evidence at the hearing. In this instance, I find that the Respondents have failed to do so. The Respondents have a clear obligation to serve their evidence on the Applicant and admit that they provided it to the Residential Tenancy Branch and believed that was sufficient. It is not. As the Respondents evidence was not served, it is not included and shall not be considered.

Preliminary Issue – Additional Evidence Requested

During the hearing, the Applicant asserted that there was a signed tenancy agreement between her and the Respondents. This was, at first, denied by the Respondents, though later L.R. confirmed that a document may have been signed but that she did not have a copy of it.

The Applicant advised that the purported tenancy agreement in her possession was provided to Service BC when she filed her application. No tenancy agreement or document purporting to be a tenancy agreement was provided to the Residential Tenancy Branch by Service BC.

I directed that the Applicant to provide a copy of the purported tenancy agreement to the Residential Tenancy Branch by the end of day on July 14, 2022. I further directed that this be served on the Respondents by the end of day July 14, 2022. The Respondents consented to the Applicant texting screenshots of the document to C.R.. I finally directed that the Respondents provide a written response limited to the issue of the authenticity or veracity of the purported tenancy agreement and that this written response be provided by no later than the end of day on July 15, 2022.

I made clear at the conclusion of the hearing that if either party failed to meet the relevant deadline, I would be making a decision based on evidence served by the Applicant and the parties' oral submissions.

The Applicant provided a copy of the purported tenancy agreement, and the Respondents provided a response within the timeframes as directed at the hearing. These are included in evidence and will be considered by me in these reasons.

Issues to be Decided

1) Should emergency repairs be ordered?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect purported tenancy:

- The Applicant began to occupy the site in June 2019.
- Rent of $400.00 was due on the first of each month.

The Applicant provides a copy of the purported tenancy agreement, which includes a shelter information form with the MCFD and the first, third, and sixth page of the standard form tenancy agreement provided by the Residential Tenancy Branch.

The tenancy agreement is signed and dated by the Respondents, though it does not list the Applicant as tenant nor is it signed by the Applicant. This point was emphasized by the Respondents in the response to the purported tenancy agreement provided by the Applicant.

The Applicant indicates that she has been renting a site from the Respondents which included water and electricity. She indicates that she has parked her tiny house at the property, which was described as a rural property in which the Respondents also reside.

The Applicant says that the Respondents have cut off water and electricity as of June 1, 2022. The Applicant says that she lives in her tiny house with her two children and that since her services have been terminated, she has been unable to reside in her house. The Applicant testified that she has been away from the site since approximately June 2, 2022 due to the termination of services.

The Applicant testified that she communicated with the Respondents via text message providing a deadline to resume service. A copy of the text message was put into evidence by the Applicant. The Applicant says that she attended the property the day before the hearing and that services had not been reconnected. The Applicant emphasized that rent for June 2022 had been paid early and includes a screenshot of an e-transfer as proof the payment had been made.

The Respondents do not deny that the Applicant has been living in her tiny house on the property since June 2019, that monthly rent was paid in the amount of $400.00, that

electricity and water was provided since June 2019, or that water and electricity was terminated on June 1, 2022. The Respondents emphasized that they provided the Applicant with notice that their arrangement would be ending on May 31, 2022. The Respondents confirm that notice to end the arrangement was provided to the Applicant via text message. The text message put into evidence by the Applicant says that notice was provided via Facebook message in April 2022.

It was argued by L.R. that their agreement with the Applicant was that she would be there temporarily and that she would not be living at the property full time. L.R. further argued that there are costs associated with the provision of water and electricity, which included water lines that froze over winter. L.R. says she needs the site returned to her for family use.

L.R. states that they provided the site for the Applicant as they are friends with the Applicant's boyfriend and that the Applicant spends most of her time at her boyfriend's place. The Applicant emphasized that she has no other residence and denies living at her boyfriend's.

L.R. argued that there is no contract with the Applicant. She says that she wrote up an agreement a year ago indicating that the Applicant was to reside at the property for only some days of the week and that the Applicant refused to sign. L.R. says there were issues when the Applicant brought dogs on the property and resided there for longer than anticipated.

The Applicant says that she already had a tenancy agreement and did not understand why the Respondents were seeking to change it. The Applicant says she obtained advice not to sign the agreement and that the agreement provided by the Respondents was not legal.

Analysis

The Applicant seeks an order for emergency repairs.

As a preliminary issue, it bears consideration whether the present circumstances are a tenancy within the understanding of the *Act*. The Applicant provides a tenancy agreement which is signed and dated by the Respondents on June 17, 2019.

Policy Guideline #9 provides guidance with respect to tenancy agreements and licences to occupy. As made clear by Policy Guideline #9, the *Act* does not apply to licences to occupy. It states the following with respect to tenancy agreements:

> **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:
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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.

There is no dispute with respect to the arrangement between the parties: the Applicant occupied the site since June 2019 and has been paying rent of $400.00 each month. There was no argument that the Applicant did not have exclusive possession of the site. There is a clear presumption of tenancy under the circumstances.

Policy Guideline #9 provides a series of factors to consider whether there is a tenancy or a licence to occupy, including the following:

- Whether the home is a permanent residence?
    - If the house is a permanent residence, it is more likely a tenancy rather than a licence to occupy.
    - Factors to consider include hook-up to services or facilities meant for permanent housing; the tenant has added permanent features such as a deck, carport, or skirting which was explicitly or implicitly permitted by the landlord; the tenant lives in the home year-round; the home has not been moved for a long time.
- Is the site located at an RV Park or Campground?
    - Though not determinative, this may militate toward a finding that there is a licence to occupy.
    - However, in circumstances where an RV is a permanent home and occupies for long continuous periods, it may be a tenancy.
- Is the site zoned for such use?
    - Zoning may inform whether there is a tenancy or a licence to occupy. However, it is it actual use and nature of the agreement between the owner and the occupier that determines whether there is a tenancy or licence to occupy.

- Other factors, which include the payment of a security deposit or whether there is a familial or personal relationship such that occupation is based on generosity rather than business considerations.

The Applicant states that the tiny home is her primary residence and that she does not live elsewhere. The Respondents argue that the Applicant lives with her boyfriend and thus was not a full-time resident of the tiny house. However, this is directly contradicted when the Respondents in their submissions when they say that there were issues with the Applicant spending too much time at the property. This point is reinforced by the submission that draft agreement put together by the Respondents a year ago included a term limiting the time the Applicant could spend in her tiny house at the property.

The tiny house is also hooked up to water and electricity. This appears to be a year-round arrangement, as the Respondent L.R. complained of the costs associated with maintaining the water service due to the lines freezing in the winter. Further, there was no argument that the tiny house has been at the property since June 2019. I find that the tiny house is the Applicant's primary residence.

No arguments were raised with respect to zoning. However, the parties conduct since June 2019 bear all the hallmarks of a landlord-tenant relationship regardless of whether the property is zoned for that use or not. There was tangential mention that the Respondents provided the site as a kindness to their friend, the Applicant's boyfriend. I do not place weight in this argument. I accept that the boyfriend may have been the contact between the Applicant and the Respondents, though this does not mean the occupation was due to generosity rather than business considerations. Indeed, the Applicant has been paying monthly rent since June 2019, which would confirm a business relationship between the parties. I have little difficulty in finding that there is a tenancy under the *Act*.

The Respondents argue that there is "no contract". Whether a signed tenancy agreement exists or not is not determinative. Section 1 of the *Act* is clear that a "tenancy agreement" included written or oral arrangements. The fact that the parties did not both sign the tenancy agreement provided is not relevant. The parties have admitted conduct that can lead to no other conclusion that the Respondents are Landlords to the Applicant Tenant. The tenancy has existed since June 2019. It appears that the parties' relationship may have soured about a year ago when the Landlords provided the Tenant with a revised agreement setting restrictions on use of the site, though this does

not invalidate the long-standing conduct of the parties which clearly indicates there is a landlord-tenant relationship.

The Landlords argue that the agreement was terminated by the notice provided to the Tenant in the spring of 2022. They say it was in the form of a text message. To be clear, s. 5 of the *Act* explicitly provides that the *Act* cannot be avoided. Under the *Act*, a tenancy may only be ended by a landlord under proscribed circumstances. Regardless of the circumstances for ending a tenancy, s. 45 of the *Act* requires a notice to end tenancy issued by a landlord to be in the approved form. A text message is not an approved form. The tenancy has not ended in accordance with the *Act*.

I further find that it is an implied term of the tenancy agreement that the Landlords are to provide water and electricity. I make this finding based on the parties conduct since June 2019 as it is undisputed that the Landlords have been providing water and electricity to the Tenant since the beginning of the tenancy.

The Landlords admit to terminating water and electricity to the Tenant on June 1, 2022. I assume that it was under a misguided belief that the arrangement was over based on their unilateral declaration to the Tenant to vacate by May 31, 2022. As mentioned above, this is not how a landlord ends a tenancy under the *Act*. They have a clear agreement, through they conduct since June 2019, to provide water and electricity to the Tenant. They have unilaterally breached their agreement due to, from their perspective, the inconvenience and costs associated with the provision of the services they have provided to the Tenant for three years. I find that the Landlords conduct in this matter to be high-handed and is utterly unacceptable.

I have little difficulty finding that emergency repairs are necessary under s. 27 of the *Act* and that water and electricity fall within the definition of emergency repairs under s. 27(1). Indeed, the repairs are necessary due to the Landlords' capricious conduct. I order pursuant to s. 27 and 55 of the *Act* that the Landlords immediately undertake emergency repairs by returning electrical and water service to the Tenant.

Further, I have directed this matter to the Residential Tenancy Branch's compliance and enforcement unit, which is responsible for ensuring compliance with residential tenancy laws in BC when a landlord or tenant has seriously and deliberately failed to follow those laws. The CEU has authority to investigate and issue administrative monetary penalties.

Conclusion

I order that the Landlords undertake emergency repairs under s. 27 *Act* by reconnecting water and electricity to the Tenant's rental site. The matter has been referred to the Residential Tenancy Branch's compliance and enforcement unit to ensure compliance by the Landlords.

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 18, 2022

Residential Tenancy Branch