



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LEKHI CAMPRGROUND LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFT, CNR, OLC, PSF, DRI, MNDCT, RR**

Introduction

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

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 39 and 55 of the Act;
2. An Order to dispute a rent increase that is above the amount allowed by law pursuant to Section 32 of the Act;
3. An Order for compensation for a monetary loss or other money owed pursuant to Section 60 of the Act;
4. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 55(3) of the Act;
5. An Order for the Landlord to provide services or facilities required by the tenancy agreement or law pursuant to Section 58 of the Act;
6. An Order to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to Section 58 of the Act; and,
7. Recovery of the application filing fee pursuant to Section 65 of the Act.

The hearing was conducted via teleconference. The Landlord's site manager, JM, and the Tenant, GM, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The RTB issued the Notice of Dispute Resolution Proceeding package for this hearing on April 20, 2022 (the “NoDRP package”). The Tenants confirmed that they personally served the Landlord with the NoDRP package two days after receiving it, on April 22, 2022. The Landlord confirmed receipt of the NoDRP package. I find that the Landlord was served with the NoDRP package for this hearing on April 22, 2022, in accordance with Section 82(1)(a) of the Act.

Preliminary Matters

At the outset of the hearing, the Landlord testified that they did not serve a 10 Day Notice or a formal rent increase notice on the Tenants. The Tenants neither produced a 10 Day Notice nor a rent increase notice in their evidence. I find that the Tenants’ claims to cancel a notice to end for unpaid rent, and to dispute a rent increase are dismissed for lack of service of the requisite notice by the Landlords.

Issues to be Decided

1. Are the Tenants entitled to an Order for compensation for a monetary loss or other money owed?
2. Are the Tenants entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?
3. Are the Tenants entitled to an Order for the Landlord to provide services or facilities required by the tenancy agreement or law?
4. Are the Tenants entitled to an Order to reduce rent for repairs, services or facilities agreed upon but not provided?
5. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on September 1, 2018. The Landlord described the tenancy, *“it’s month to month, everybody’s month to month here, they’re all long-term tenants basically, they’ve been there forever, including me.”* The Tenant stated that he has a tenancy agreement which he said he submitted to the RTB.

The Landlord testified that monthly rent is \$535.00 plus GST payable on the first day of each month. A utility deposit of \$100.00 was collected at the start of the tenancy and is held in the Landlord's bank account. On September 29, 2021, a new owner took over the RV park. The new owner spoke to their accounting firm, and they were advised that all residents have to pay GST in the RV park. The Tenant argues that the monthly rent should be \$535.00 plus hydro.

The Landlord sent an Official Notification to "all tenants" which differentiates between long term tenants, and vacationing persons. It states in part:

Park rates for pad rental are: \$535.00 plus gst of \$25.75 per month for a total of \$561.75
Power is extra and is charged by individual meters (1 per site) and is charged at a rate of \$.1077 per kilowatt used. Power is subject to gst. If and when prices are to be increased, I will advise you all.

Extra vehicles (cars/trucks/motorcycles/campers/boats/boat trailers and utility trailers)
Are charged at a rate of \$25.00 plus gst of \$1.25 for a total of \$26.25 per item per month. These
Are over and above the 2 vehicles allowed per site.

Summer seasonal rates only apply to vacationing persons who use sites 1 or 16 during the months of June, July and August. The rates are \$799.00 plus gst of \$39.95 for a total of \$838.95 for a month and \$249.00 per week plus gst of \$12.45 for a total of \$261.45. Power is included for both of these units.

Should we have an empty unit other than site 1 or 16, and no long term person is using it during the months of June, July or August, we may use it for vacationing persons.

Site 1 has 15,30 and 50 amp power and site 16 has 15 and 30 amp

The seasonal rates in bold are for informational purposes only and do not apply to long term tenants, our rates stay steadily at the above rate of \$535.00 plus gst plus power plus gst.

Should any of you have questions regarding the gst, please see me as I have paperwork from the accountant and from CRA – gst section that shows that we must pay gst on rent as well as utilities.

The Tenant testified that when they moved in, three years ago, rent was a fixed amount. The Tenant stated that his rent has increased over time "*as they normally do.*" The Tenants uploaded two undated copies of the park rules and regulations. The first one has a handwritten notation at the top saying, "ORIGINAL PARK RULES".

Park rules regarding vehicles state:

1st copy - Original Park Rules	2nd copy
<p>MAXIMUM OF 2 VEHICLES per site.</p> <p>We ask that said vehicles are parked in a manner that does not impede traffic on the roadway and are not parked in empty sites. Large garbage trucks navigate the roadway as well as other commercial vehicles.</p> <p>If vehicles are found to be parking in unauthorized sites, they may be towed away at owners expense.</p> <p>ALL VEHICLES must be operable and fully insured.</p>	<p>MAXIMUM OF 2 VEHICLES per site. If there is room for other vehicles i.e. boats, cargo trailers etc. there is an additional monthly charge of \$25.00 plus \$1.25 gst = \$26.25 per veh.per month</p> <p>We ask that said vehicles are parked in a manner that does not impede traffic on the roadway and are not parked in empty sites. Large garbage trucks navigate the roadway as well as other commercial vehicles. If vehicles are found to be parking in unauthorized sites, they may be towed away at owners expense.</p> <p>ALL VEHICLES must be operable and fully insured.</p>

The fourth page of the 2nd copy states, *"Please note: contracts are valid for 6 months and then they will be revisited. Contracts will need to be signed again once the 6 month is up. If your stay is shorter than 6 months, then gst applies. Summer (June-July-Aug.) rates are different and gst is applicable, but power is included."*

The Tenant said when the new owners took over, the Tenants had their Motorhome RV, two cars and one car dolly. The car dolly was parked in the Tenants' RV site, but they were not charged for it. Beginning in April 2022, the Tenant was charged \$25.00 plus GST for the car dolly on the site. He recently sold his extra car and the car dolly and did not have to incur that extra charge in July 2022. The car dolly had been parked on the site for the three years the Tenants have resided in the park, and this charge was newly implemented.

The Tenants also uploaded a document giving instructions on skirting. Those instructions follow:

Skirting: Professional skirting made especially for your rv or self made skirting, where you buy the vinyl material and install yourself

OR

If you have a wood frame built and put the insulation in the frame and then cover with the silver insulation use a silver or clear tape. Do not use any other color of tape.

If you make wood skirting, and paint it, please keep the paint color to a shade of white (uniformity helps). Please do not leave wood skirting unpainted.

If you are using the blue foam insulation only, you must keep the Paint color to a shade of white.

Please ensure that you complete your skirting, half finished jobs are not Acceptable per the owners

The Landlords' skirting policy suggests that the Landlord provides rules and regulations to long-term tenants of the park who build permanent features to their rental units on their sites.

The Tenant argues that he should not be charged GST on his rent as the rental site is his permanent home. He is considered a long-term tenant and resides there during the summer and the winter months. The Tenant testified that he holds a tenancy agreement with the Landlord, that they pay their rent monthly, and they have access to services and pay their utilities expenses when requested by the Landlord. The Tenant stated that older people are now living in RVs because we cannot afford rent. The Tenant said that the Landlord has raised his rent in the past as Landlords can do.

The Landlord said a new owner took possession of the park in September 2021. The Landlord further explained that the new owner spoke to his accounting firm about whether or not they have to charge GST. The Landlord said that the accounting firm spoke to the Canada Revenue Agency, and they were told that park residents must pay GST on their rent and utilities. The email from the accountant stated:

As stated on the phone, GST must be collected on site rent and utilities because the trailers do not qualify as "residential units" per the RED writing on page 5 of the attachment (P-104). The paragraph 16 of the GST Memorandum 19.2.2 that your renter is pointing to that says there is no GST

if rented for greater than a month does not apply in your situation because you are not a residential trailer park because of the reason noted in the P-104 in RED (8 bullet points). The classification of the RV park is based on how the sites are being used. In your case, the trailers are not affixed to the ground with permanent sewer, water, power, etc... connection (like a mobile home). I have confirmed all of this with the Complex GST Rulings department of the CRA.

The Tenant uploaded additional information provided by the accountant that defines what is a residential unit. The additional notes include:

Whether a particular recreational unit is sufficiently modified and affixed to land in the same manner as a house and considered to be a similar premise is a question of fact. The determination of whether a particular recreational unit may be considered to be a residential unit is made on a case-by-case basis. Factors that may indicate that a particular recreational unit is a residential unit include:

- the recreational unit is designed, or has undergone the alterations necessary, for year-round connection in a permanent way to service facilities such as water, sewer, septic tank, electricity, telephone and cable; [the Tenants starred this item]*
- the recreational unit is installed or affixed in a permanent manner, for example, on sonotubes or a cement pad;*
- the recreational unit is used as an individual's primary place of residence;*
- the recreational unit has been modified to add a room, screen porch, deck, car port, skirting, etc.;*
- a lease agreement of at least one year, with renewal options, has been entered into which permits year-round use;*
- the recreational unit's undercarriage, including wheels and hauling tongue, has been removed;*
- the recreational unit is assessed for municipal property tax purposes as a residential dwelling and is subject to property taxation; and*
- the recreational unit is intended to remain affixed to the land for the foreseeable future.*

All relevant factors should be considered in determining whether a recreational unit has been significantly modified and affixed to land such that it possesses the necessary characteristics, including permanency, to establish that it is a similar premise and therefore a “residential unit” within the meaning of the definition. No one factor is more important than another and no single factor alone may be determinative of the issue.

The Landlord said when she first moved into the park, she was charged GST on her rent, and when the Tenants first moved in, they paid GST on their rent. Starting in April 2019, the owner at the time said the tenants did not have to pay GST. The Tenants did not testify to having to pay GST when they first moved into the park. The Tenants stated GST is an added charge to their rent, over and above the 1.5% allowable rent increase for 2022 and they dispute that this new charge is allowed to be put on them. The Tenants say their rent is \$535.00 and is not \$561.75. The Tenants paid the \$561.75 because they did not want to be issued with a 10 Day Notice for non-payment of rent.

The Landlord further explained that they reserve a couple spots for summer vacationers which allows the park to retain its RV park status.

The Landlord testified that the Tenants' car dolly was ignored over the years, but she was recently instructed by the new owner to charge the Tenants for the car dolly as an extra 'vehicle'.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 2(1) of the Act states that that Act applies to tenancy agreements, manufactured home sites and manufactured home parks. The Act also defines “rent” to mean money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a manufactured home site, for the use of common areas and for services or facilities, but does not include a fee prescribed under section 89(2)(k) [regulations in relation to fees].

For the Landlord's benefit, I include Section 14 of the Act which states:

Changes to tenancy agreement

- 14** (1) *A tenancy agreement may not be amended to change or remove a standard term.*
- (2) *A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.*
- (3) *The requirement for agreement under subsection (2) does not apply to any of the following:*
- (a) a rent increase in accordance with Part 4 of this Act;*
 - (b) a withdrawal of, or a restriction on, a service or facility in accordance with section 21 [terminating or restricting services or facilities];*
 - (c) park rules established in accordance with section 32 [park rules];*
 - (d) a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.*

RTB Policy Guideline #9-Tenancy Agreements and Licences to Occupy describe what a tenancy agreement concerns:

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:

- 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.*

In *Steeves v. Oak Bay Marina Ltd.*, 2008 BCSC 1371, the BC Supreme Court found: the Act 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.

The Landlord did not dispute that the Act is applicable in this matter. The Tenants testified that they are classified as long-term tenants, and they live in their RV year-round. The Tenant did not provide evidence that they use their RV for recreational use. I find that the park site is the Tenants' primary residence, and the Act is applicable to this matter.

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, "*The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.*" This section must be read in conjunction with Section 60 of the Act.

Policy Guideline #16 asks me to analyze whether:

- a party to the tenancy agreement has failed to comply with the Act, Regulation, or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and,
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find the Tenants have a tenancy agreement with the Landlord, which includes a monthly rent amount of \$535.00, exclusive use of their site where they can park all their vehicles, and they pay for utilities when notified by the Landlord on a monthly basis. The Tenant testified that he did not pay GST on his rent before. I also find that the Tenants indicated and testified to characteristics of permanence attached to their RV.

Beginning in December 2021, the Landlord stated that she was instructed by the new owner to charge GST on the Tenants' rent. The Landlord did not specify that they are ordered by the CRA to do so. The Tenants were charged \$561.75 for December's rent, and that amount has been charged and paid going forward.

In *Trial Lawyers Association of British Columbia v. Royal & Sun Alliance Insurance Company of Canada*, 2021 SCC 47 (CanLII), the equitable doctrine of promissory estoppel was explained:

[15] *Promissory estoppel is an equitable defence whose elements were stated by Sopinka J. for this Court in Maracle, at p. 57:*

The principles of promissory estoppel are well settled. The party relying on the doctrine must establish that the other party has, by words or conduct, made a promise or assurance which was intended to affect their legal relationship and to be acted on. Furthermore, the [promisee] must establish that, in reliance on the [promise], he acted on it or in some way changed his position. [Emphasis added.]

The equitable defence therefore requires that (1) the parties be in a legal relationship at the time of the promise or assurance; (2) the promise or assurance be intended to affect that relationship and to be acted on; and (3) the other party in fact relied on the promise or assurance. It is, as we will explain, implicit that such reliance be to the promisee's detriment.

The Tenants and the Landlord have a tenancy agreement that is the legal foundation of their relationship. The Tenants state that they have not been charged GST on their rent before, and although they paid the full new rent amount of \$561.75, they did this because they did not want to be evicted for non-payment of rent. The Tenants dispute the additional \$26.75 they have been charged on their monthly rent and seek its return. The Tenants are older residents who state that they live in their RV because they cannot afford the high amounts of rent being charged in town. I note that the 2nd copy of the Park Rules states that, "*If your stay is shorter than 6 months, then gst applies.*" I infer from this statement that if a tenant's stay is longer than 6 months, then GST is not applicable.

I agree with the Tenants that the GST charge is analogous to an improper rent increase amount, and the Landlord cannot unilaterally backstep out of its previous conduct due to

the doctrine of promissory estoppel. The Tenants are entitled to compensation equivalent to \$26.75 for nine months, totalling **\$240.75**. For clarity, the Tenants' rent in September and going forward will be \$535.00 per month until served with a formal rent increase.

The Tenants seek compensation for the additional charges for the car dolly on their park site. I decline to award compensation for the additional charges the Tenants incurred due to the new owner deeming that the car dolly was equivalent to an extra vehicle. The rules include cargo trailers as an additional vehicle, and the car dolly is included in that context.

As the Tenants are successful in their claim, they are entitled to recovery of the **\$100.00** application filing fee. The Tenants total monetary award is **\$340.75**. The Tenants may, pursuant to Section 65(2) of the Act, withhold \$340.75 from a future rent payment.

Conclusion

The Tenants' application for monetary compensation is granted in the total of \$340.75. The Tenants may withhold that amount from a future rent payment on **ONE** occasion.

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: August 31, 2022

Residential Tenancy Branch