Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALDERBROOK RV PARK
and [Applicant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing was first heard on March 18 and July 11, 2022, and a decision was issued on July 20, 2022. However, the Respondent submitted an Application for Review Consideration and, in a Review Decision dated August 5, 2022, the Respondent was granted a new hearing of the original application. The review hearing was scheduled and heard on September 2, 2022.

The Applicant sought the following relief, pursuant to the Manufactured Home Park Tenancy Act (the Act):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
- an order with respect to a disputed rent increase;
- an order granting compensation for monetary loss or other money owed;
- an order suspending or setting conditions on the Respondent's right to enter the rental unit or site;
- an order that the Respondent comply with the Act, Residential Tenancy Regulation (the Regulation), and/or the tenancy agreement; and
- an order granting recovery of the filing fee.

The Applicant attended the hearing and was accompanied by ML and KK, witnesses/advocates. The Respondent was represented at the hearing by TD, an agent, and MC, legal counsel. The Applicant, ML, KK, and TD provided a solemn affirmation at the beginning of the hearing.

Preliminary Issue – Service

The Review Decision issued on August 5, 2022 stipulated that the Respondent was to serve the Notice of Dispute Resolution Proceeding documents on the Applicant. Although neither party was able to provide a precise date when this occurred, the parties were in attendance or were represented and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

In addition, the parties confirmed receipt of all evidence served prior to the previous hearing on July 11, 2022. No objections were raised with respect to service and receipt of these documents during the hearing. Therefore, pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

Finally, the Applicant submitted additional documents to the Residential Tenancy branch Dispute Management System on September 2, 2022. MC objected to these documents on the basis they were not served in accordance with the Rules of Procedure. I find these documents were served on the Respondent less then 14 days before the hearing, contrary to Rule of Procedure 3.14. As a result, they have been excluded from consideration.

Preliminary Issue – Jurisdiction

The Applicant submits that the Act applies to his accommodation. He testified he lives in a fifth wheel trailer at the Respondent's RV park. He testified that he has lived there for 12-13 years. The Applicant testified he pays a monthly rate, plus tax, for his site. Services provided include water, electricity, and sewer. The Applicant testified he does not have cable television. He stated there is no skirting around his fifth wheel or deck because it is not permitted in the RV park. However, the Applicant testified he had stairs up to his door installed because of a previous fall.

ML testified that most of the occupants of the RV park have been there on a long-term basis. However, this assertion was not supported by the testimony of other occupants or documentary evidence, and ML acknowledged she does not reside at the RV park. ML also advised that the Applicant was not given a copy of the park rules until recently.

The Respondent submits that the Act does not apply to the Applicant's circumstances and that I do not have jurisdiction to hear the application.

Upon questioning by MC, TD testified that it is her understanding that the Applicant has lived at the RV park since 2015. In addition, TD testified the Respondent charges tax on the monthly rate. A recent receipt was submitted into evidence. TD also referred to photographs of the Applicant's hook-ups. Specifically, the Applicant's fifth wheel is connected to a sani-dump (sewer) and there is an extension cord for electricity.

In addition, TD testified that the sites are intended to be temporary and that permanent structures are not permitted. In addition to the images of the Applicant's site, photographs of other sites were submitted which show other sites with no examples suggesting permanence such as skirting, decks, or stairs.

TD also testified with respect to the general operation of the park. She testified that customers typically pull up in front of the office, check-in, and pre-pay for their stay. TD stated that everyone is given a copy of the park rules, which she asks then to review. One example of a park rule is that guests are asked to check out by 10:00 p.m. or to register as an overnight guest. In addition, TD testified that her husband is the grounds keeper and is responsible for maintenance of hook-ups and the grounds. All occupants are required to do is keep their site tidy.

TD also confirmed there are no written tenancy agreements for any occupant of the RV park.

In addition, MC made submissions with respect to zoning. MC referred to a Parcel Report and zoning by-laws which permit industrial uses including camping but do not permit residential use. In reply, KK suggested the Respondent is not following the by-laws relied upon by the Applicant.

MC also submitted there is a policy argument for finding the MHPTA does not apply to the Applicant's accommodation. He suggested that if there was a determination that the MHPTA applies, different "classes" of occupants would be created, all in violation of local by-laws.

Policy Guideline #9 describes the difference between tenancy agreements and licenses to occupy. Tenancy agreements are described as follows:

> 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.

Licenses to occupy are described in Policy Guideline #9 as follows:

> 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:
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> > 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.

With respect to property zoning, Policy Guideline #9 states:

> In Powell v. British Columbia (Residential Tenancy Branch), 2016 BCSC 1835, the Court held that municipal zoning may be relevant in that could inform the nature of the legal relationship between an owner and occupier. While zoning may inform this question, it is the actual use and nature of the agreement between the owner and occupier that determines whether there is a tenancy agreement or licence to occupy.
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> The fact that the landlord is not in compliance with local bylaws does not invalidate a tenancy agreement. An arbitrator may find that a tenancy agreement exists under the MHPTA, even if the property the rental pad is on is not zoned for use as a manufactured home park. As the Court pointed out in Wiebe v Olsen, 2019 BCSC 1740, “there is no statutory requirement that a landlord’s property meet zoning requirements of a manufactured home park in order to fall within the purview of the MHPTA.”

After carefully considering evidence and submissions of the parties, and Policy Guideline #9, I find the Applicant has not established that a tenancy agreement exists under the Act. Rather, for the following reasons, I find the Applicant has a license to occupy and that the Act does not apply to the relationship between the parties.

First, factors suggestive of permanence weigh in favour of a license to occupy. For example, the Applicant confirmed during the hearing that he has not installed a deck or skirting around his fifth wheel trailer because it would be in contravention of the RV park rules. Although stairs were installed by the Applicant, I find the stairs are not suggestive of permanence as they were only installed to ensure his safety after a fall on the site. In addition, photographs of other sites submitted by the Respondent indicate that permanent structures such as skirting and decks are not permitted in the RV park generally.

Second, while I accept that the Applicant has lived in his fifth wheel trailer for at least seven years and believes it to be a permanent arrangement, I find that the duration of the Applicant's occupation of the site is not determinative.

Third, the photographic evidence of the Respondent indicates that the services and facilities provided to the Applicant are not meant for permanent housing. Instead, I find they are akin to camping hook-ups which may be quickly and easily removed. For example, electricity to the Applicant's fifth wheel trailer is provided via an extension cord. Further, there is insufficient evidence of any infrastructure suggesting permanence, such as "frost-free water connections", referred to in Policy Guideline #9.

Fourth, I find the Respondent retains control over and access to the Applicant's site, which suggests that the Act does not apply to the agreement between the parties. Specifically, the Respondent's evidence with respect to property maintenance, which I accept, confirms that the grounds, including the sites and hook-ups, are maintained by the Respondent. According to the Respondent, all that is required of the Applicant is to keep his site tidy. Additionally, I accept the Respondent's evidence that guests to the RV park are required to leave by 10:00 p.m. or to register as overnight guests.

Fifth, although not determinative, Policy Guideline #9 indicates that zoning can inform the nature of the relationship between the parties. I accept the undisputed evidence of the Respondent with respect to zoning. Specifically, I accept that local zoning requirements do not permit residential use of the RV park.

Finally, there was no dispute that the Applicant pays tax on the monthly rate, which is suggestive of a license to occupy.

While I recognize my finding with respect to jurisdiction differs from that of the arbitrator in his decision dated July 20, 2022, I note that the arbitrator did not have the benefit of the Respondent's evidence at that hearing.

As noted above, I find the Act does not apply to the agreement between the parties. Rather, I find the Applicant has a license to occupy. Therefore, I decline to consider the Applicant's application further for lack of jurisdiction.

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: September 8, 2022

Residential Tenancy Branch