Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE PSF OLC FFT

Introduction

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

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- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 55;
- an order that the landlord provide services or facilities required by law pursuant to section 58;
- 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 landlords pursuant to section 65.

This matter was reconvened from a prior hearing on April 21, 2022, following which I issued an interim decision (the "**April Decision**"). At this hearing, I ordered that, before I could adjudicate the tenant's application, I must first determine if the Residential Tenancy Branch (the "**RTB**") has jurisdiction over this dispute this matter. The parties agreed that the hearing on August 23, 2022 would deal with the issue of jurisdiction only, and should I find that the RTB has jurisdiction, the hearing would be reconvened to address the substance of the tenant's application on another date.

The entirety of the August 23, 2022 hearing was used by the parties to make submissions relating to whether the contractual relationship between the parties was a tenancy agreement or a license to occupy. The Act applies to tenancy agreements but does not apply to licenses to occupy.

Throughout this decision I will use the terms "landlord" and "tenant". The use of these terms should not be understood to mean that I have made any finding as to jurisdiction. Rather, I use them to ensure the readability of this decision.

I will refer to dwelling unit in which the tenant resides as the "**Unit**", the plot of land the Unit is currently located on as the "**Site**", and the RV park and campground the Site is located in as the "**Park**".

The tenant attended the hearing on her own behalf. The landlord was represented by its property manager ("**MT**") and its counsel ("**PK**"). All were given a full opportunity to be

heard, to present affirmed testimony (in the case of the tenant and MT), and to make submissions.

Preliminary Issue – Service of Documents

I made specific orders relating to the timing service of documents in the April Decision. I issued a subsequent interim decision on July 14, 2022 (the "**July Decision**") amending the April Decision, at the request of the landlord, due to the tenant's failure to comply with the orders made regarding service of her evidence.

At the hearing, neither side made any objections about the service or form of the other's evidence. As such, I deem that each has been served in accordance with the Act.

Preliminary Issue – Naming of Landlord

In the April Decision, I wrote:

> Between the initial application, the judicial review application, and the present status of the application, three different entities have been identified as the "landlord": the property manager; the entity named as landlord on this decision; and a different corporate entity on the judicial review decision which does business as the entity named as landlord on this decision.
>
> Landlord's counsel indicated that the correct name of the landlord is the one on the judicial review decision. The tenant stated that she is unclear if this is correct, but that the park is being operated by the entity named on this application, and that the property manager has been her main point of contact throughout the tenancy. The landlord agreed to provide documentation relating to the correct identity of the landlord.
>
> I will address the issue of the identity of the landlord at the reconvened hearing.

In the documentary evidence submitted prior to this hearing, the landlord provided a title search of the Park, which shows the registered owner of the Park as the entity named on the judicial review decision ("**BBC Ltd**"). It submitted a Sole Proprietorship Summary from BC Registry Services for an entity with a similar name to that of the landlord on this application (HRVPC vs HPC). It shows that the proprietor of HRVPC is BBC Ltd.

In its written submissions, the landlord argued that the correct name of the respondent should be BBC Ltd doing business as HRVPC. PK confirmed that beyond owning the landlord the Park is located on, BBC Ltd is responsible for operating and administering the Park and does so under the name HRVPC.

The tenant argued that BBC Ltd is operated by other individuals or businesses and that these individuals should be named as the landlord. She provided screenshots of

website which suggest that an entity named D+S, controls BBC Ltd and that employees of D+S have been seen at the Park.

The tenant testified that she pays her rent to HRVPC.

Based on the registry and corporate records searches, I find that BBC Ltd owns the Park and does business as HRVPC. I accept that BBC Ltd operates the Park under this moniker as well. Based on these facts, coupled with the fact that the tenant pays monthly rent to HRVPC, I find that BBC Ltd is the properly named as a respondent in this application.

It may be that BBC Ltd controlled by other entities or individuals. However, this fact alone does not give rise to naming these entities or individuals as parties to this proceeding. I am satisfied that BBC Ltd is an entity capable of entering to contractual relations. I see no reason why I should "pierce the corporate veil" and name any of its controlling minds as parties.

Accordingly, I order that the name of the respondent landlord on this application be amended from HRC to BBC Ltd dba HRVCA (full name on the cover of this decision).

Issues to be Decided

Is the agreement between the parties a tenancy agreement or a license to occupy?

Background and Evidence

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

1. Tenant's History in the Park

The tenant first moved into the Park in 2015. She did not occupy the Site at that time. She testified that from October 2015 to June 2016 she occupied site 32. Then, from July 2016 to November 2017 she occupied site 40. From December 2017 to October 15, 2018, the tenant occupied the Site (site 35). From October 16, 2018 to December 2018, the tenant testified that she moved to site 127, "a temporary seasonal spot during winter while [her daughter] moved into site 35 with her family".

The tenant then moved to site 129 for December 2018. She then moved to site 115 for January 2019 and February 2019. From February 2019 to May 2019, the tenant resided on site 115. From June 2019 to September 15, 2019, the tenant testified that she moved back to the Site (which she characterized as her "personal home"), with her daughter. At the end of this time, her daughter and her daughter's family moved to site 115. The tenant's daughter paid the landlord rent for the Site for the period of time she

and her family resided on it (October 2018 to September 2019). The tenant testified that since has lived on the Site continuously since September 15, 2019.

Since moving into the Park, the tenant testified, the Sites in the Park she occupied were her sole residences.

The landlord disputes these dates. In an affidavit sworn July 29, 2022, MT states that according to the landlord's records, the tenant's rental of the Site begin on June 30, 2020. In support of this MT attached a copy of the park rules which the tenant signed on June 30, 2020 (more on this below) and a copy of the tenant's reservation history created from the landlord's reservation management system. This document indicates that the tenant "checked out" of site 23 on September 6, 2019 and checked into the Site on June 30, 2020. This would suggest that between September 6, 2019 and June 30, 2020, the tenant did not reside in the Park.

The tenant submitted a screenshot from her Facebook page dated October 20, 2019 showing a picture a living room with a caption stating "Nice to have my house back even if it's not finished ..yet…LOL but if you know me you know I Renovations so it'll be fun". She indicated that this photo and the caption were of and referring to the Unit located on the Site. She also submitted a receipt received from the landlord indicating that she paid rent for the Site for the months September (14 to 30), October, and November 2019, and January, March, and April 2020.

The tenant asserts that she is "a tenant of the Park", and that she has been since 2015.

The landlord denies that an individual can be a tenant of the Park. Rather, it argues that the tenant has entered into a series of agreements (either implicit or explicit) to occupy different Sites located in the Park. It argues that the Act does not contemplate a tenancy spanning multiple manufactured home sites, so when considering the length of the tenant's occupancy (one of the factors in determining whether the agreement is a license to occupy or a tenancy) I should only consider the length of time the tenant has occupied the Site.

2. Agreements and Rules

When the tenant first moved into the park, she signed an agreement with the landlord which set out the terms of by which the tenant could reside in the Park (the "**2015 Agreement**"). Neither party provided a full copy of this agreement in their evidence package. The tenant provided the second page, which contains her signature. This page contains the following:

> If the Company determines that the Customer or their Guests do not comply with the aforesaid terms or the Campground Rules, then the Customer forfeits their deposit (per Term #2 of this Agreement) and any advance payments made (per Term #1 of this agreement) – and the Company reserves the right to remove the

> Customer or their Guests and their respective vehicles from the Company property.
> […]
> Explanatory notes:
>
> - as the daily rates or fee for “camping site services” are provided on a daily basis this agreement is not governed by the *Residential Tenancy Act* of British Columbia.
>
> […]
> - “Daily rate” and “Daily discount rate” is as of the date of this agreement and subject to change without prior notice.

On cross-examination, the tenant testified that she signed the 2015 Agreement and agreed to not being governed by the *Residential Tenancy Act*.

The tenant agreed that she paid a deposit to the landlord (something that is not permitted by the Act) and that for as long as she has been residing in the Park, fees were charged on a daily basis, but that she paid them monthly. She testified that, until this dispute arose, she always paid GST on her fees.

As stated above, the tenant signed a copy of the park rules on June 30, 2020 (the “**2020 Agreement**”). Beyond setting out the rules of the Park, this document set out the daily rate ($50 + GST) and daily discounted rate ($20.27 + GST) the tenant was to pay for staying in the Park. It also set out other fees (a “resort fee” which fluctuated seasons from $0.50 to $1.25 per day) and utility charges (water, sewage, internet, and cable are provided by the Park Owner at no charge to the tenant, whereas hydro is charged based on usage).

The tenant testified that she paid rent on a monthly basis and that the amount she paid varied, depending on the number of days in the month. She also paid the “resort fees”, but stated that it was “under protest”.

The 2020 Agreement also states:

> 5. Utility Charges: Water, sewage, internet, and cable usages are provided by the park owner at no charge. Hydro fees are charged accordingly based on the respective campsite usage for the duration of the guests stay.
> […]
> 12. Campsites & common areas: The water, sewage, and electrical connections are for temporary use only and the park owner retains access to and control over these connections at all times period the park owner retains access to and control over common areas, and all vacant and occupied campsites at all times without notice.
>
> […]

15. Visitors: You are responsible for your visitors and their actions in the park. Visitors are only permitted during the hours of 7:00 AM and 11:00 PM. All visitors must park across from the pool at the designated visitor parking and walk to your campsite.

[…]

17. Explanatory notes:
    a. The daily rates and daily discounted rates are for the use of "camping site services" are provided on a daily basis.
    b. Use of a campsite is for recreational use and is not a source of primary residence or permanent use, and is not governed by the *Residential Tenancy Act* of British Columbia.
    c. The park rules are subject to change without prior notice including the daily rates which are not fixed and may vary at any time.
    d. If campground management, at their sole discretion, determines that any guest of their visitors do not comply with the park rules, then the respective guest in their visitors must vacate the assigned campsite and the property immediately.
    e. Guests have the right to vacate the campsite without notice.
    f. The park owner pays all taxes associated to the property including the operation under business license defined as Tourist Trailer Park/Campsite.

PK argued that any reference to the *Residential Tenancy Act* should be understood as a reference to the *Manufactured Home Park Tenancy Act.*

I should also note that the tenant's daughter signed a very similar set of park rules in 2019 when she moved onto the Site. It included the following term: "use of a campsite is NOT governed by the *Residential Tenancy Act* of British Columbia".

The tenant testified that she only signed the 2020 Agreement because a previous park manager threatened to evict her if she did not. She did not provide any documentary evidence supporting this assertion.

The tenant testified that the rules set out in the 2020 Agreement were not the rules that were enforced in the Park. She stated that "unwritten" rules were enforced. For example, she insisted that, if she wanted to move out of the Park, she would have to give MT notice of her intention to do so.

The tenant denied that there were any restrictions on the times visitors could stay at the Park or where they could park their cars. She stated that the Park had security, but that they did not monitor such things.

She testified that the multiple occupants of the Park, herself included, reside in the Park full-time and that an entire section of the Park is set aside for full-time residents. She did not provide any evidence to support her testimony as to the residence status of other residents of the Park, but stated that this was “common knowledge”.

The tenant testified that she has erected a permanent deck on the Site, which is in plain view of MT’s office. She argued that this is proof of the permanency of the Unit. MT stated that he has never allowed permanent wooden structures to be built on Site, but will allow removable modifications (such as wooden lattices) to be erected.

The tenant cross-examined MT. He stated that while he had “evicted” other occupants of the Park and given them “paperwork” when so doing, that he did not use any government forms. He noted that these occupants filed a dispute with the RTB, but the RTB found that the relationship was a license to occupy, and not a tenancy, and declined jurisdiction. He attached a copy of the RTB’s decision to his affidavit.

MT testified that he has never towed a car from the Park. Additionally, he testified that, to his knowledge, a car has never been towed from the Park. He stated that he had no oversight of the towing company and that it does not report to him. He agreed that, in addition to the rule regarding visitor parking in the 2020 Agreement, there was also a rule requiring guests to have tags on their vehicles for the purposes of parking. He stated that this rule pre-dated his tenure at the Park (he started in January 2021).

MT testified that Park security enforces the rules regarding visiting hours and that security has never advised him if they have removed guests after hours.

MT testified that he has never performed maintenance on the Site, but has on other sites in the Park. He testified that, without permission (which the landlord argues is not required) he has entered other sites to remove fallen branches and to trim trees.

The parties also made submissions as to whether the Unit met the definition of “manufacture home” in the Act. However, for the reasons set out below, it will not be necessary for me to answer this question. As such, I decline to set out the parties’ positions on the issue.

Tenant’s Position

The tenant argued that the Park is her permanent home, and that she has resided there continuously since 2015. She argued that the landlord is aware of the length of her stay, and has not objected to her erecting a permanent structure on the Site. She pays rent on a monthly basis. For these reasons, she says the Act applies to the contractual relationship between the parties.

Landlord’s Position

The landlord argued that agreement between the landlord and the tenant which permitted the tenant to reside in the Park did not amount to a tenancy agreement, but was rather a license to occupy.

In support of this position, the landlord argued that, per RTB Policy Guideline 9, I must look to what the parties intended the relationship to be at the start of the agreement. It submitted that the 2020 Agreement is the agreement by which the tenant is allowed to reside on the Site. This agreement stated that the *Residential Tenancy Act* does not apply to the parties' relationship, that the "park owner retains access to and control over common areas, and all vacant and occupied campsites at all times without notice" and that rent is paid daily, among other things. These factors support the finding the 2020 Agreement is a license to occupy.

Analysis

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.

Accordingly, as this is the tenant's application, she bears the burden of proof to show it is more likely than not that a tenancy agreement exists between the parties.

Policy Guideline 9 sets out factors which may distinguish a tenancy from a license to occupy:

- home is a permanent residence, features of which 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 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;
- there are restricted visiting hours;
- payment of a security deposit; and
- the parties have a family or personal relationship, and occupancy is given because of generosity rather than business considerations.

The landlord argued that the 2020 Agreement should be considered the agreement whereby the tenant is permitted to occupy the Site.

The tenant argued that her tenancy should be considered to have started when she first moved into the Park.

Section 1 of the Act defines tenancy agreement as:

> **"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities;

Accordingly, if the agreement between the parties is a tenancy (as argued by the tenant), then there it can only be said to have started when the most recent time the tenant moved onto the Site (in either mid-September 2019, per the tenant, or June 2020, per the landlord). The is nothing in the Act which would allow a tenant to be a “tenant of the Park”. Rather, a tenancy affixes to a specific Site occupied within the Park.

Based on the rent receipts submitted into evidence by the tenant, I find that the tenant has occupied the Site since mid-September 2019. I find it more likely than not that the landlord did not properly keep track of the tenant’s comings and goings in its reservation management system. I find that the receipts issued are a more reliable indicator of when the tenant occupied the Site. Similarly, I find it is more likely than not that the tenant resided in the Park continuously between 2015 and the present date.

I acknowledge that the tenant moved onto the Site previously. However, I find that by subsequently moved off of the Site, and her daughter moving onto it and paying rent, that the tenant’s tenancy agreement or license to occupy, was terminated.

As such, per Policy Guideline 9, I must consider what the parties intended and all the circumstances surrounding the occupation of the Site from mid-September 2019 onwards.

There is not any written agreement between the parties from mid-September 2019 to set out what the parties intended when the tenant started residing on the Site. As such, the agreement would be an implied agreement (there is no evidence to suggest that the parties made an explicit verbal agreement regarding the terms of the occupancy in

September 2019). I find it more likely than not that it would have been on similar terms as the tenant had agreed to in the past. Accordingly, we can look to the 2015 Agreement to see on what terms the tenant originally agreed to when she first moved into the Park. This does not mean that the 2015 Agreement governs the parties' resolution, however. Rather, I find that it makes a useful starting point in the analysis.

The 2015 Agreement makes it clear that the parties did not intend the *Residential Tenancy Act* to apply to the agreement. Additionally, the 2015 Agreement required the tenant to pay a deposit (something the Act does not permit), rent was charged on a day rate which the landlord could change without notice, and specified that the landlord reserved the right to remove visitors or their guests.

I agree with the landlord's counsel that it is reasonable to interpret the reference to the *Residential Tenancy Act* as referring to the *Manufactured Home Park Tenancy Act*. Given that the tenant was moving into the Park, renting a plot of land therein, and living in a manufactured home (or something similar), I find to would make little sense for the landlord to reference an Act which, on its face, would have no applicability to the relationship.

On its own, the term stating that the *Residential Tenancy Act* does not apply explicitly supports the landlord's position that the RTB does not have jurisdiction to hear this matter. The inclusion of this term in the 2015 Agreement suggests that the parties may have intended that the agreement was to be a license to occupy. The other terms set out above (that rent is charged on a daily basis, that a deposit was required, and that the landlord has the right to remove visitors or guests) also support this interpretation.

I must also note that a full copy of the 2015 Agreement was not submitted into evidence (only the second page was). As such, I cannot say what the full terms of the 2015 Agreement were.

The parties submitted a full copy of the 2020 Agreement into evidence. As stated above, I do not understand this document to represent the creation of the agreement by which the tenant may reside on the Site. Rather, I understand it as a memorialization of the implied agreement which was created in mid-September 2019, when the tenant moved onto the Site.

As with the 2015 Agreement, the 2020 Agreement, states that the *Residential Tenancy Act* does not apply. It also contains similar terms: rent is charged daily and the landlord may require a visitor or guest to vacate the Park. Additionally, it contains a number of other terms all of which favour the finding of there being a license to occupy, including:

1) utilities being included in the day rate;
2) the landlord having the right to access the Site without notice;
3) hours limiting when guests may attend the Park;
4) a note stating that the Site is not to be used as a primary residence; and
5) guests being able to end the agreement without notice to the landlord.

The fact that the 2015 and 2020 Agreements have differing terms demonstrate that the nature of the agreements whereby the tenant was permitted to reside on various sites within the parks over the years changed.

Despite the changes, both agreements contain multiple terms that suggest that the landlord intended to enter into a license to occupy with the tenant. Rent was charged on a daily basis. The landlord had the right to access the Site without notice. Limitations were put on the hours visitors could come to the Park. The tenant was not supposed to live on the Site year-round. The landlord paid utilities. The tenant could end the tenancy without notice to the landlord (the Act requires a tenant give notice).

The tenant testified that she was forced to sign the 2020 Agreement by an employee of the landlord. However, she has not provided any corroborating evidence of this assertion (contemporaneous correspondence complaining of this, for example). Additionally, a significant term, that the parties did not intend the *Residential Tenancy Act* to apply to the agreement, was the same between the 2015 and 2020 Agreements. The tenant did not suggest that she was forced to sign 2015 Agreement under duress or similar circumstances. As such, I do not find it likely that the tenant would have been inclined to refuse signing a document that appears to have substantially confirmed a previous document she signed willingly.

The tenant argued that, despite the rules stated in the 2020 Agreement, the Park operated pursuant to a different set of “unwritten” rules. She did not provide much in the way of evidence to support such a claim (corroborating testimony from other occupants of the Park regarding these unwritten rules or the lack of enforcement of the written rules, for example). In the absence of such evidence, I find that she has failed to discharge her onus to prove that “unwritten” rules governed the Park.

I accept the tenant’s evidence that she occupies the Site as her primary residence and that she lives there year-round. Based on the photographs submitted into evidence, I find that she has constructed a permanent deck outside the Unit. Given the proximate of the Site to the landlord’s offices, I find it more likely than not that the landlord was aware of the deck’s existence. I accept that the landlord has not objected to the presence of the deck. These factors weigh in favour of a finding that a tenancy agreement exists.

However, when weighing these factors against those supporting a finding that a license to occupy exists (set out above), I find that it is mor likely than not that the agreement by which the tenant is permitted to stay on the Site a license to occupy. The terms of the 2015 and 2020 Agreements favour such a finding, and I find these agreements as reliable sources to determine what the parties intended the nature of the agreement to be when the tenant moved onto the Site. I also find that the tenant failed to discharge her burden of proof to demonstrate that the circumstances surrounding the occupation of the Site indicate that the agreement was a tenancy and not a license to occupy.

For these reasons, I find that the Act does not apply to the contractual relationship between the parties, and that I do not have the jurisdiction to adjudicate the tenant's application.

Conclusion

The agreement between the parties which allows the tenant to occupy the Site is a license to occupy and not a tenancy agreement. I do not have the jurisdiction to adjudicate this dispute.

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 29, 2022

Residential Tenancy Branch