



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding PLAZA MOBILE HOME & RV
PARK and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OLC**

Introduction

This hearing dealt with the Tenants' application pursuant to the *Manufactured Home Park Tenancy Act* (the "Act") for an Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 55(3) of the Act.

The hearing was conducted via teleconference. The Landlord, the Tenants and their advocate 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.

Throughout this decision I will use the terms "Landlord" and "Tenant" to assist in the readability of this decision. The use of these terms should not be understood to mean that I have made any finding as to jurisdiction.

The Tenants testified that they personally served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on February 1 or 2, 2023 (the "NoDRP package"). The Landlord confirmed receipt of the NoDRP package. I find that the Landlord was sufficiently served with the NoDRP package on February 2, 2023, in accordance with Section 64(2)(b) of the Act.

The Tenants also testified that they personally serviced their evidence on the Landlord the following day after serving the NoDRP package. The Landlord confirmed receipt of

the Tenants' evidence on February 7, 2023. I find that the Landlord was sufficiently served with the Tenants' evidence on February 7, 2023 in accordance with Section 64(2)(b) of the Act.

The Landlord personally served their evidence on the Tenants on February 14, 2023. The Tenants confirmed receipt of the Landlord's evidence. I find that the Landlord's evidence was served on the Tenants on February 14, 2022 pursuant to Section 81(a) of the Act.

Issues to be Decided

1. Does the Act have jurisdiction to decide this claim?
2. Are the Tenants entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to 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 licence to occupy began on May 10, 2022. Monthly rent is \$857.50 plus GST for a total of \$900.00. The Landlord of the park provides hydro and water utilities. The Tenants did not pay a security deposit. The Tenants said they were supposed to also get basic cable.

The Landlord was approached by the male Tenant's brother, and it was discussed that his brother needs an RV pad to rent and due to his life's circumstances, he needed a place to get back on his feet. The Landlord was told that the male Tenant's partner is quiet and likes to garden, and the Landlord agreed to allow them to reside in the RV park.

The Landlord uploaded a Licence to Occupy card which stated the date the licence to occupy period began was May 10, 2022 and the date out says, "take each month as it comes". The Landlord said there is no tenancy agreement. The Tenants are provided with hydro and water and are not charged for these utilities. The Landlord testified that the Tenants' neighbour turned off the hose for the Tenants' sewage because it was constantly overflowing, and it caused the neighbour's pad to be soaked with sewage.

The Landlord uploaded a two-page Park Rules document containing five RV Site rules, and ten General rules. The document states that “Contravention of these rules, will result in immediate termination of License to Occupy. **Maximum length of stay by any person and/or their RV at [name of park] is 182 days in any 12 month period according to City of [name] Zoning Bylaw [#####].**” The park rules also state that mail can be collected at the office, as Canada Post does not recognize RV residents as “fixed addresses” and will NOT deliver.

The Landlord testified she did knock on the side of the Tenants’ trailer, as the Tenants have a fence around their deck area where the front door is located, and the fence is usually locked to outside visitors.

The Landlord maintained that she does not have to provide written notice to evict these Tenants as their residence in the park is a Licence to Occupy. She contrasted this to the mobile homes in the park, and in that case, she stated she is governed by the Act.

The female Tenant uploaded a Shelter Information form. This form states, “**This form is NOT a tenancy agreement. This form should be used ONLY if a tenancy agreement is NOT available.** This form is for ministry information only. ...” The form notes that the type of rental accommodation is Other-Pad Rental, there is no security or pet damage deposit required.

The Tenants received an ‘abusive’ verbal eviction notice from the Landlord. This occurred because, they say, the female Tenant’s son and daughter-in-law are staying at her place while she is recuperating after suffering from an aneurysm. The Tenant alleged their quiet enjoyment has been breached by the Landlord. The Tenants are seeking an Order for the Landlord to comply with Act and Regulations, and to stop breaching their right to quiet enjoyment of their rental site.

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.

RTB Policy Guideline #27-Jurisdiction talks about Licences to Occupy. It states that Section 2 of the Act says that it applies to tenancy agreements, manufactured home sites and manufactured home parks. Definitions of these from the Act are:

"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;

"manufactured home site" means a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home; and,

"manufactured home park" means the parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located.

I note that the site is not solely a manufactured home park, but also an RV park. The Tenants moved in in May 2022, so they are just coming onto one year living at this park site. The structure they reside in is an RV Class C motorhome. When they moved in, there was an existing deck which they pulled their RV motorhome up to.

RTB Policy Guideline #9-Tenancy Agreements and Licences to Occupy 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. (emphasis added)

Some factors that help distinguish a tenancy agreement from a licence to occupy are:

- Features of permanence:
 - 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; and
- there are restricted visiting hours.

The Tenants have resided in their RV motorhome on the site since May 10, 2022. This occupation arose after the male Tenant's brother approached the Landlord to ask about his brother being permitted to have an RV pad in the park. The Landlord allowed the Tenants to move in. The Tenants did not provide any documentary evidence or verbal evidence that they have added permanent features around their RV motorhome. The Landlord's park rules specify matters that can result in immediate termination of the Tenants' Licence to Occupy. The Landlord did not collect a security deposit, and they pay utilities serving the Tenants' RV motorhome.

I note the Landlord documents the occupation as a Licence to Occupy, but this is not determinative that that is the case. Other factors must be assessed and weighed to make the determination whether there is a tenancy agreement or a licence to occupy.

The park rules specify scenarios where the licence to occupy made be immediately revoked. The Landlord differentiates her conduct between residents with licences to occupy and the mobile home tenants which are governed by the Act. She stated she has never provided a written notice to those individuals who are in the park under a licence to occupy.

I find based on the totality of the evidence provided by the parties that the Tenants reside in the park under a Licence to Occupy. So, therefore, the Act does not provide rights and responsibilities to the Tenants, and I cannot decide their claim of a breach of quiet enjoyment. The Tenants must find their remedy elsewhere. I dismiss their claim without leave to re-apply.

Conclusion

The Tenants' application is dismissed without leave to re-apply.

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: March 30, 2023

Residential Tenancy Branch