



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding SHADY LANE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNLC-MT, RP, OLC; CNLC, DRI, RP, OLC

Introduction

This hearing dealt with the tenant's first application, filed on February 7, 2023, pursuant to the *Manufactured Home Park Tenancy Act* ("Act") for:

- more time to make an application to cancel the landlord's Twelve Month Notice to End Tenancy for Conversion of a Manufactured Home Park ("12 Month Notice"), pursuant to section 59;
- cancellation of the landlord's 12 Month Notice, pursuant to section 40;
- an order requiring the landlord to make repairs to the rental unit, pursuant to section 26;
- an order requiring the landlord to comply with the *Act*, *Manufactured Home Park Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 55.

This hearing also dealt with the tenant's second application, filed on February 11, 2023, pursuant to the *Act* for:

- cancellation of the landlord's 12 Month Notice, pursuant to section 40;
- an order regarding a disputed additional rent increase, pursuant to section 35;
- an order requiring the landlord to make repairs to the rental unit, pursuant to section 26;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 55.

The landlord's three agents, "landlord TL," "owner SSK," and "owner SDK," and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing lasted approximately 26 minutes.

This hearing began at 9:30 a.m. with me and the tenant present. The tenant left the hearing from 9:36 to 9:41 a.m. in order to call back on a landline, instead of his cellular phone, since I was unable to hear him properly, due to the intermittent cellular phone reception outside at his work. The landlord's three agents called in late at 9:38 a.m., claiming that they did not have the access code to call into this hearing because the wrong code was given to them when this matter was rescheduled from March 13, 2023 to March 14, 2023. This hearing ended at 9:56 a.m.

I had to caution the tenant multiple times during this hearing because he kept yelling at me and arguing with me, since I repeatedly told him that I could not hear him properly and his cellular phone kept cutting in and out, when he was calling outside of his work. He repeatedly argued that this hearing date was changed from March 13, 2023 to March 14, 2023, so he was unable to take time off work and he had to call from his work. I repeatedly notified him that I had no control over his cellular phone or network.

All hearing participants confirmed their names and spelling. Landlord TL and the tenant both provided their email addresses for me to send this decision to both parties after this hearing.

Landlord TL stated that the two owners own the sites and the park. He claimed that he had permission to represent both owners at this hearing. He provided the rental property address.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the tenant affirmed, under oath, that he would not record this hearing. At the outset of this hearing, landlord TL affirmed, under oath, that neither he, nor the two owners, would record this hearing.

I explained the hearing process to both parties. I informed them that I could not provide legal advice to them. They had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

Preliminary Issue – Dismissal of Tenant's Applications

At the outset of this hearing, the tenant confirmed that he did not have his second application in front of him. He said that he thought he withdrew that application, he thought it was cancelled, he did not know it was part of this hearing, and he did not want

to pursue it. I informed him that his second application was dismissed in its entirety, without leave to reapply. He affirmed his understanding of same.

At the outset of this hearing, landlord TL and the tenant agreed that the landlord did not provide a 12 Month Notice on the approved RTB form to the tenant, to vacate the site. I informed both parties that the tenant's application for more time to make an application to cancel the landlord's 12 Month Notice and cancellation of the 12 Month Notice, was dismissed without leave to reapply. I notified them that if the 12 Month Notice was not provided in an approved RTB form, it did not comply with section 45 of the *Act*, so there was no notice to cancel.

The tenant stated that he wanted to pursue his first application. Landlord TL said that he did not receive a copy of the first application from the tenant. He stated that he received an email evidence reminder from the RTB, so he called the RTB to obtain the phone number and access code to call into the hearing. The tenant claimed that he served his first application to the landlord by registered mail, but he did not have the date, mail receipt, or the mail tracking number in front of him during this hearing.

I find that the landlord was not served with the tenant's first application, in accordance with sections 82 and 83 of the *Act*, since the tenant did not provide the date of service or the registered mail tracking number during this hearing.

I informed both parties that since the tenant did not provide proof of service and the landlord did not receive the tenant's first application, I could not proceed with this hearing and decide the tenant's first application. Both parties affirmed their understanding of same.

I notified both parties that the remainder of the tenant's first application, for an order requiring the landlord to make repairs to the rental unit, and an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, was dismissed with leave to reapply. Both parties affirmed their understanding of same.

Preliminary Issue – Jurisdiction

During this hearing, landlord TL repeatedly argued that this was not a manufactured home park, it was an RV park and campground. He claimed that an RTB information officer gave him information stating there was no tenancy.

I informed landlord TL that RTB information officers provide information only, not legal advice, to parties requesting assistance. I notified him that RTB Arbitrators make decisions about applications, including jurisdiction, not RTB information officers.

I informed both parties that neither party filed an application requesting a decision about jurisdiction. Therefore, I did not make a decision about jurisdiction. I did not decide the merits of the tenant's two applications.

I notified landlord TL that the Residential Tenancy Policy Guidelines contemplate tenancies in RV parks or campgrounds if it is used as a permanent residence.

At this hearing, both parties agreed that the tenant owns his trailer and rents the site in the park from the landlord. The tenant confirmed that he uses his trailer on the site as a permanent residence.

For both parties' information, Residential Tenancy Policy Guideline 9, states the following, in part, at page 2:

The home is a permanent primary residence

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

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.

...

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.

Landlord TL continued to argue with me throughout this hearing, stating that this was not a tenancy, and this was an RV campground. I repeatedly cautioned him that I was not making a decision regarding jurisdiction, as noted above.

Conclusion

The tenant's first application for more time to make an application to cancel the landlord's 12 Month Notice, and cancellation of the 12 Month Notice, is dismissed without leave to reapply.

The remainder of the tenant's first application, for an order requiring the landlord to make repairs to the rental unit, and an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement, is dismissed with leave to reapply.

The tenants' second application is dismissed in its entirety, without leave to reapply.

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: March 14, 2023

Residential Tenancy Branch