



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding WESTWOOD LAKE RV PARK
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Application *****3633: DRI, MNDCT
Application *****3635: DRI

Introduction

1. Pursuant to section 51 of the Manufactured Home Park Tenancy Act (the Act), I was designated to hear the above mentioned joined applications.
2. Applicant AB applied for (file number *****3633):
 - an order to dispute a rental increase, pursuant to section 36; and
 - a monetary order for compensation for damage or loss under the Act, Manufacture Home Park Tenancy Regulation or agreement, pursuant to section 60.
3. Applicant JJ applied for (file number *****3635) an order to dispute a rental increase, pursuant to section 36.
4. The applicants moved out and are now only seeking monetary compensation because the respondent did not comply with the Act regarding rent increases. The respondent stated the parties did not have a tenancy under the Act, but a license to occupy a site in a campground.
5. Applicants AB and JJ and the respondent, represented by owners IJ (hereinafter, the respondent) and RJ, attended the hearing on April 27, 2023. The respondents were assisted by counsel AS (hereinafter, the counsel). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.
6. At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All

the parties confirmed they understood the Rules of Procedure and section 87(1) of the Act.

7. This decision should be read in conjunction with the interim decisions dated November 19, 2021, January 21, March 14 and December 21, 2022.

Correction

8. The interim decision dated December 21, 2022 states: “tenant AB moved to the rental site in November 2017”.
9. Applicant AB testified that she moved to the site in November 2007. The parties did not dispute AB’s testimony.

Summary of the proceedings

10. The applications were first heard on November 18, 2021. On November 19, 2021 I ordered the parties to serve all the evidence.
11. On January 21, 2022 I adjourned the hearing because applicant JJ was not available to attend the hearing.
12. On March 14, 2022 the parties confirmed receipt of the notice of hearing and the evidence and that they had enough time to review these documents. The parties started presenting their evidence and making submissions. I adjourned the hearing due to time constraints.
13. On December 21, 2022 the parties continued to present evidence and I found there is a presumption of tenancy. I adjourned the hearing again.
14. On April 27, 2023 the parties finished presenting their evidence and submissions regarding this matter. All the parties confirmed they had enough time to present their evidence and submissions.

Photographs

15. Both parties submitted photographs into evidence and were allowed to make submissions related to the photographs. The counsel requested the photos

submitted by the applicants should not be accepted into evidence, as they are not relevant because they show sites not occupied by the applicants.

16. I find the photographs submitted by the applicants are relevant because it is important to have a view of the entire campground, as it speaks to the purpose of the design of the sites and this is relevant to the issue of jurisdiction. Thus, I accept the photographs and will consider them.

Submissions

17. While I have turned my mind to the evidence and testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.
18. The respondent has been managing the campground since 2003.
19. The counsel said that there was no intention to create a tenancy under the Act and the applicants did not pay municipal property taxes.
20. The respondent submitted a map of the campground (hereinafter, the map). It indicates the campground is named "Westwood Lake Campgrounds", and there are 66 "R.V. Full hook ups" sites. It also indicates there are boat rental facilities, cottage, tiny house, gathering place, toilets, recycling area, sani-station, showers/restroom, playground, picnic shelter, dishwashing station and laundry.
21. The counsel and the respondent stated that there are no borders or clear divisions for the 66 sites in the campground.
22. The applicants affirmed that some sites were separated by hedges or trees, some sites have fences and all the sites were clearly marked.
23. The respondent testified the occupants stay on the sites on average seven to ten days during the summer. About 30 sites are occupied during winter and some sites are temporarily occupied by forestry workers during their contracts, university students during the school year and snowbirds during winter, as the campground is in the warmest area of Canada during winter. About seven sites

are permanently occupied and any site can be occupied by long term or short term occupants.

24. The applicants said that sites 1-16 were permanently occupied by 30 occupants. The applicants stated they were referred by the respondent as long term occupants.
25. Applicant AB affirmed that she was able to move to a site in a long term resident area, there were different rent rates depending on the season and that long term occupants had a different rate.
26. The respondent testified that electricity and internet were not included in the monthly payments, but cable was.
27. All the parties agreed the applicants paid GST monthly during their occupancy.
28. The respondent submitted a decision issued by the Canada Revenue Agency on March 13, 1995 named "GST application ruling Supply of Recreational Vehicle Sites" (hereinafter, the GST decision). It states:

Statement of Facts and Transactions

1. Westwood Lake R.V. Park (1989) Ltd. (the park) is located at [redacted for privacy] and has 32 sites for tents and 34 sites for recreational vehicles (R.V.'s) which it offers for rent.
2. Twenty of the 34 R.V. sites are suitable for long term use as they have sewer, water and electrical hook-ups.
3. The R.V.'s are motor homes, travel trailers, and similar vehicles. They are not mobile homes as defined in the Excise Tax Act.
4. Last year, the twenty R.V. sites suitable for long term use were rented to students who stayed for eight months, but normally the sites are rented for periods of three to six months.

RULING REQUESTED

You wish to know if GST should be charged on the rental of the R.V. sites.

RULING GIVEN

Provided that the statement of facts and transactions is correct and constitutes a complete disclosure of all relevant facts and transactions, and that those transactions are carried out in the manner described, we make the following ruling: The supply of recreational vehicle sites in the park is subject to GST pursuant to section 165 of the Excise Tax Act.

There are two avenues to exempt the rental of the sites from GST: 1) the site is in a residential trailer park as defined in the Excise Tax Act; and 2) the place of

shelter is a residential unit that is or is to be affixed to the land. There are additional stipulations to exempt the rental of the sites from GST via either avenue, however, neither avenue is accessible to you.

29. Applicant AB said that “a lot has changed from the 1995 GST application ruling. I feel the situation of affordable housing has changed”. Applicant JJ stated “things have changed from 1995, the CRA ruling is outdated”. The counsel affirmed that there has been no change to the campground’s situation since the GST decision.
30. The respondent testified the municipal zoning has always been for campgrounds (Recreational Vehicle zoning) and that it is not possible to have a manufactured home park in the campground’s address.
31. Applicant AB said the property zoning is not relevant and that there is a manufactured home park next to the campground.
32. The respondent submitted a document named “Westwood Lake R.V. Park Registration Card” (hereinafter, the registration card). It states:

I have read and agree to the terms and conditions as stated on the reverse.

Signature _____

Terms and conditions:

This property is privately owned and the Management reserves the right to refuse service to anyone and will not be responsible for accidents or injury to guests for loss of money, jewellery, or valuables of any kind. Rates are as posted. Charges are for the use of the assigned site and campground facilities only. The site is for vacation purposes only. The Campground assumes no responsibility for loss through fire, theft, collision or otherwise to the trailer or car or their contents, whether due to negligence or otherwise. **Use of the Campground and equipment for yourself, your family and your guests is solely at your own risk and subject to the Campground Rules, receipt of a true copy of which is hereby acknowledged.** The Campground, its employees, servants, or agents shall be saved harmless from any claims whether in contract or by tort, by or on behalf of all those admitted to the Campground pursuant or because of this agreement. In addition to the set charges, any taxes levied on the trailer, any ancillary structures or the rates charged shall be paid on registration or as may be otherwise required. The signatory, as signed on the reverse side, represents and warrants that he/she is responsible for and signing on behalf of his/her family, party, guests, and any other persons accessing the campground with his/ her permission or knowledge. Any violation of this agreement, the determination of which shall be in the sole discretion of the campground operator, shall result in termination of this agreement. Upon termination, the camper, his/her family and guests shall be deemed to be

trespassers, under the Trespass to property Act, and the operator is hereby appointed their respective agent to disconnecting services and removal of their trailer, structures and equipment.

(emphasis added)

33. The respondent stated the applicants signed a copy of the registration card. Applicant AB affirmed that she probably signed the registration card sometime and applicant JJ signed it monthly.

34. The respondent submitted a document named "Park Policies, Rules and Regulations" (hereinafter, the park rules). It states:

Visitors: \$3.00 charge. They must leave by 10:00 PM as this is out quiet time and we will not tolerate excessive noise after this time.

[...]

9. Proper insulating of water hoses must be done by Oct. 1st (failure to have it done will result in us disconnecting your water supply). Proper sewer connections are also required, or you cannot hook up to our sewer outlet. (We do sell some RV parts in our store where the office is).

10. All longer term RVers are expected to keep their RVs clean and it's up to you to maintain your site. We want all sites to be kept clean and tidy at all times. (don't want to see the site cluttered and messy) Washing vehicles is not allowed on site.

11. No renovating or fixing RVs in the park.

12. We are a quiet park, so no one should have to put up with a lot of noise at any time. Respect your neighbours. Quiet time is 10:00pm.

13. Visitors staying for any length of time will have to pay extra. All guests are required to park at the front in the visitor parking or outside the park on the side of the road. Visitors coming in for the day are required to pay \$5.00 each. All guests are required to leave the park by 11:00 pm. All RVers must shut the gate at the entrance if you leave or arrive after 11:00pm. In the summer months, the gates are closed daily at 11:00pm. First one out in the morning can leave the gate open.

[...]

15. We expect our longer term people to help us out with the recycle we have set up in the park. We have a big bin for rubbish and the other big bin is for all paper, cardboard. Separate bins are provided for all clean plastics. All pop, beer, juice, water containers are to be put in the proper plastic containers in the recycle area, not in the big bin. No construction materials, furniture, batteries, appliances, carpet allowed, at all. It's up to you to dispose those things yourself.

16. We have mail boxes available at the office, if you want to get mail delivered here. A \$40.00 deposit for the key will be required. We will need to know people's full names if you want proper delivery. When you leave our park, it is up to you to

change your mailing address, as the post office won't forward your mail. If you plan to have something delivered by courier you must have your site # on it or they won't deliver it to you. We will not sign for anything that does not have our name on it.

[...]

21. We also require one month's notice if you are going to be leaving our campground.

We sincerely hope your stay with us is a happy one. However if we find that you cannot obey the rules, or you become a problem for us, you will have to leave.

35. The respondent testified that the park rules are eventually updated, and the applicants received them.
36. Applicant AB said that the park rules submitted are not dated and that she was not aware of them. Applicant JJ stated that the respondent informed the tenants about the park rules verbally and he did not receive them during the tenancy.
37. The respondent affirmed that there was a restriction to visitors' hours, as the campground's gates closed after 10:00 PM. Applicant JJ testified that he observed the campground's gate closed only three times during his tenancy.
38. Applicant AB said that she could not be evicted without notice and that she could only terminate her monthly tenancy with a one month notice, as required in the park rules and under the Act. Both applicants served a one month notice prior to moving out.
39. The counsel stated there was no frost-free water connection in the sites and the applicants were responsible for insulating their water connection if they wanted to have water during winter.
40. The applicants affirmed the sites were hooked up for services and facilities, as each site had an individual post for sewer, electricity and water. The connections for the facilities were in a wooden box provided by the respondent. The applicants had a frost-free water connection, as they purchased a heat tape to insulate the water hose. The applicants did not use a heat tape for some years.
41. The counsel testified the applicants' vehicles had movable decks and styrofoam skirts and the respondent did not authorize them to have permanent structures in

their sites. The counsel said there was a movable roof structure attached to JJ's vehicle, not to the ground. The decks were detachable pallets on the ground.

42. Applicant JJ stated the roof structure was a permanent fixture mounted to his vehicle and that he also had a permanent deck, a driving range and a golf net in his site. The decks were not pallets on the ground but a structure built with beams and contained stairs. The parties submitted photographs showing the structures resting on the ground.
43. The applicants affirmed they worked for six hours to remove the structures when they moved out. The respondent was aware of and did not oppose these structures.
44. The counsel testified the campground's guests did not have hard-wired electricity in their sites and that in a manufactured home park usually there is hard-wired electricity.
45. The counsel said that the applicants paid a deposit for the mailbox rental and for the final electricity bill.
46. Applicant AB stated the respondent informed her the deposit was for the last month's electricity bill, the site's clean up and the mailbox. AB believes the deposit required by the respondent was confusing.
47. The counsel affirmed Canada Post delivered mail to the campground's occupants at the campground's address and the campground's staff delivered the mail to the mailboxes.
48. The applicants testified they paid a \$40.00 deposit to use the mailbox and received mail addressed to the campground's address including their site number during their tenancy. The mail was delivered to the mailbox by the campground's staff.
49. The counsel said the parties did not have a family or personal relationship.
50. The respondent stated the campground was never involved in an application for dispute resolution at the Residential Tenancy Branch (RTB). Since 2003 the

respondent asked several occupants to leave because they did not comply with the park rules and the occupants always left voluntarily.

51. The counsel affirmed the British Columbia Supreme Court (BCSC) ruled in *Steeves v. Oak Bay Marina Ltd*, 2008 BCSC 1371 (hereinafter, *Steeves*) that the predominant purpose of the Act is to deal with manufactured homes, not campgrounds like the one operated by the respondent:

52. Applicant JJ asked me to consider four decisions from the BCSC but was unable to reference them.

Analysis

53. I emphasize that the interim decisions should be read in conjunction with this decision.

54. I find the map indicates (para 20) the campground is primarily designated as a place for temporary residence, as it contains leisure structures to support recreational vehicles, camping tents and cabins: boat rental, cottage, playground, picnic shelter.

55. Based on the parties' testimony (paras 21 and 22) and the map, I find the parties were able to identify the sites in the campground, regardless of how clearly marked they were.

56. Based on the parties' testimony (paras 23 to 25), I find the respondent was aware and accepted that some occupants permanently occupied the sites. The map does not indicate there is a section for long term or permanent occupants. I find, on a balance of probabilities, there is no evidence that there is a specific area designated for long term or permanent occupants.

57. The applicants did not provide testimony about what has changed after the GST decision (para 29). I find the GST decision is relevant because it states that some sites are suitable for long term occupants, some sites are rented for longer periods and others are rented for shorter periods (para 28, topics 2 and 4).

58. Tenancies under the Act are not subject to GST payments. The GST decision states: “The supply of recreational vehicle sites in the park is subject to GST pursuant to section 165 of the Excise Tax Act.”

59. I accept the respondent’s uncontested testimony (para 30) that the campground is not zoned as a manufactured home but as a campground (recreational vehicle zoning). I find that the municipal zoning is one of the relevant points in this matter, as stated in *Powell v. British Columbia*, 2016 BCSC 1835:

[67] Furthermore, apart from the fact that these factors and such evidence are identified in the Guidelines as relevant to the issue that was before the Arbitrator, it is clear that such evidence was relevant. Thus, for example, whether GST is charged by a park owner to a guest/tenant informs the nature of the legal relationship made between the property owner and the guest/tenant. So, too, is the question of whether the property owner sought a security deposit, or not, from the guest/tenant. Such security deposits are common in the context of tenancies and unusual in the case of persons who simply seek to stay at a campground. Similarly, the zoning of the lands in question, and what forms of activity that zoning lawfully allows, is pertinent. In this case, the zoning of the lands occupied by Riverbend did not allow residential dwellings or tenancies. Finally, it is relevant that s. 84 of the Act states “Except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia”.

60. Based on the applicants’ testimony (para 33), I find the applicants signed the registration card.

61. The registration card (para 32) clearly states the signatories received a copy of the park rules, read them, and agree with them. Furthermore, the applicants admit (para 38) they complied with the park rules during their occupancy by serving a one month notice to end their occupancy. Based on this, I find the respondents received the park rules during their occupancy and provided a contradictory testimony denying receiving the park rules (para 36).

62. I find the park rules (para 34) are mostly aligned with a place primarily designed for temporary occupancy rather than a living accommodation: visitors are charged a fee; occupants only have access to a mailbox if they rent one; the respondent can ask users to leave. However, park rule 21 is similar to section 38(1) of the Act, as the respondents have to serve one month notice before moving out.

63. I accept the respondent's uncontested testimony that the campground is located in the warmest area in Canada during winter (para 23).
64. Based on the parties' testimony (paras 39 and 40) and park rule 9 (para 34), I find the respondents were expected to insulate their water hoses by purchasing a heat tape. I find that connections in a wooden box are not-frost free, as the occupants were expected to purchase a heat tape to insulate the water hoses.
65. Based on the photographs and the parties' testimony (paras 41 to 43), I find the structures attached to the vehicles were not permanent structures. I accept the applicants worked for six hours to remove the structures. Furthermore, the photographs submitted by the applicants show the deck is a wood structure not attached to the ground but resting on the ground.
66. I accept the uncontested testimony that the applicants paid monthly rent of \$580.00, plus GST and the electricity bill, when the tenancy ended and that the respondent collected a deposit of \$120.00 (page 2 of the interim decision dated December 21, 2022). I accept the convincing testimony explaining the \$120.00 deposit was received for the mailbox rental and the final electricity bill (para 45).
67. Section 17 of the Act prohibits landlords from accepting a security deposit. The applicants paid a deposit for the mailbox rental and the final electricity bill and did not ask the respondent to return it during their multi-year occupancies.
68. I accept the uncontested testimony that mail was delivered to the campground and the campground's staff delivered it to the mailboxes, which the occupants could only use because they paid an extra deposit (paras 47 and 48).
69. I accept the uncontested testimony the parties did not have a family or personal relationship (para 49).
70. I accept the uncontested testimony that the respondent has not been involved in an application at the RTB since 2003 and that he has asked occupants to leave the park (para 50).
71. I note that applicant JJ asked me to consider four decisions from the BCSC but was unable to reference them (para 52). I considered the decisions that I find are relevant to this matter.

72. In *Steeves*, the BCSC states:

[112] The MHPTA is not intended to regulate seasonal campgrounds that are utilized not by large manufactured homes that require significant effort to move from place to place but by wheeled vehicles intended and used as temporary accommodation and licensed to be moved on their own power or towed behind other vehicles. That such RVs can and occasionally are used as longer term housing is evidenced by some of the homes in the Pedder Bay Park. That use in and of itself does not, in my opinion, change the character or purpose of the MHPTA. I therefore reject the plaintiffs' argument that the conversion of the park from its current nature to a seasonal RV park does not represent a change to a use "other than a manufactured home park".

73. In *McDonald v Creekside Campgrounds and RV Park*, 2020 BCSC 2095 (hereinafter, *McDonald*), the BCSC states:

[61] The case law confirms that permanence constitutes part of the definition of "living accommodation" as it applies to manufactured homes covered by the MHPTA. Permanence may be determinative of whether a tenancy exists. **The passage of time may have the effect of changing the original agreement, but the arbitrator's reasons make a conclusory statement in that regard without any analysis.** In *D. & A. Investments Inc. v. Hawley*, 2008 BCSC 937, this Court upheld an arbitrator's decision that the MHPTA applied to recreational vehicles in an RV park because they were being used as a principal residence over several years, rather than for recreational use.

(emphasis added)

74. The BCSC also concluded that the Act applies in *D. & A. Investments Inc. v. Hawley*, 2008 BCSC 937:

[28] As noted in paragraph 10, the dispute resolution officer did refer to the Guideline, quoting the section relating to factors which "would tend to support a finding that the arrangement is a licence to occupy and not a tenancy agreement". He did not specifically consider evidence put forward on behalf of the petitioner, considered in the Guideline as factors which would tend to support a finding that the arrangement was a licence to occupy and not a tenancy agreement. Specifically, those are that payment or a security deposit is not required; that the owner retains access to, or control over, portions of the site; that the owner retains the right to enter the site without notice; and that the occupier may vacate without notice. The petitioner notes other factors indicating that there was not the type of tenancy there is with the manufactured home park residents: that the units in question were in the

area designated as R.V. park, not the area designated as the manufactured home park; that rent was calculated on a daily basis; that the property owner pays the utilities such as cablevision and garbage pickup (although occupants do pay for their own electricity consumption); that occupants do not have to pay the cost of installing and maintaining permanent hook-ups, including frost free water connections; that there are no written tenancy agreements; that occupants do not have to maintain their own sites; and that they only have to pay up to the last day they occupy the site, rather than to the end of the month.

75. In *Knight v British Columbia*, 2022 BCSC 1644 the BCSC stated: “[69] A license is merely permission given by the owner of the land for someone to occupy it.”

76. I find that in this matter the similarities with a tenancy under the Act (long term occupancy as a primary residence and park rule 21 similar to section 38(1) of the

Act), do not outweigh the numerous reasons as to why there was no tenancy under the Act:

- the occupants did not have exclusive possession of the sites (December 21, 2022 decision, page 8);
- the campground is primarily designated as a place for temporary residence (para 54);
- GST is collected on the monthly occupancy fee, as the Canada Revenue Agency issued a decision ordering the respondent to collect GST on the payments received for occupancy (paras 57 and 58);
- the zoning is for campground (para 59);
- the parties were aware of the park rules and complied with them during their occupancy (para 61);
- the park rules are mostly aligned with a place designed for temporary occupancy (62);
- the respondents did not have frost-free connections (paras 63 and 64);
- the structures attached to the vehicles were not permanent (para 65);
- a deposit for the mailbox rental and the final electricity bill was collected and the applicants did not ask for this money to be returned during their occupancy (paras 66 and 67);
- mail was delivered to the occupant' mailboxes by the campground's staff (para 68),
- the parties do not have a family or personal relationship (para 69).

77. I note that, unlike in *McDonald*, I individually and specifically analyzed in this decision and the December 21, 2022 decision each reason for my conclusion.

78. Considering all the above, similarly to *Steeves*, I find the parties had a license to occupy and accepted the conditions of a license to occupy for years in a campground primarily designed for temporary occupation.

79. Per section 2 of the Act, the Act applies to tenancy agreements, not licenses to occupy.

Conclusion

80. I do not have jurisdiction to hear these matters.

81. 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: May 17, 2023

Residential Tenancy Branch