



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC, FFT**
 CNC-MT, FFT

Introduction

This hearing dealt with the Applicants' application pursuant to the *Manufactured Home Park Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 40 and 55 of the Act;
2. More time to dispute the notice pursuant to Section 59 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 65 of the Act.

The hearing was conducted via teleconference. The Respondent's Manager, JM, RV park worker, BS, Representative, DW, and the Applicants 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.

Both parties acknowledged receipt of:

- the Respondent's notice to vacate (not a formal notice) served by attaching a copy to the Applicants' door on December 6, 2022, the Applicants confirmed receipt on December 6, 2022, served on December 6, 2022;

- the Applicants' Notice of Dispute Resolution Proceeding package and evidence personally served on the Respondent on December 13, 2022, the Respondent confirmed receipt on January 6, 2023, served on January 6, 2023;
- the Respondent's evidence served personally on March 31, 2023, the female Applicant confirmed receipt, sufficiently served on March 31, 2023.

Pursuant to Sections 64(2)(b), 81(g), 82(1)(a) and 83 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

1. Are the parties under a license to occupy or a tenancy agreement?
2. If the Applicants are under a tenancy agreement, are the Applicants entitled to cancellation of the Landlord's One Month Notice?
3. Are the Applicants entitled to more time to dispute the notice?
4. Are the Applicants entitled to recovery of the application filing fee?

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 Respondent testified that this licence to occupy began on October 13, 2018. Monthly rent is \$690.00 payable on the first day of each month. A security deposit of \$200.00 was collected at the start of the tenancy and is still held by the Respondent.

The Applicant corrected that she moved into the RV park in 2008 when she lived with her previous husband. After he died, she bought a 5th wheel trailer and she physically moved to an adjacent site in the park.

On December 6, 2022, the Applicant came home and found a letter attached to her door. The letter stated:

To further my past letter,(s) it now unfortunately comes to the point that your right to occupy the site is revoked, as you are aware this is a License to Occupy.

We have engaged the bailiff and they will be in touch with you with regards to vacating the site in a timely manner. I trust the above to be in order.

Park Management

Preliminary Matter

Jurisdiction

The Respondent testified that the Applicants' residence in the RV park is a Licence to Occupy. Their evidence to support this is:

- female Applicant's application for licence to occupy in the park dated October 13, 2018.
- Rules and Regulations & License to Occupy RV Pad at [Park name] Effective April 1, 2004. Executed by female applicant in 2008:
 - Limits trailer and vehicle numbers on the pad
 - Damage deposits collected
 - Occupant is responsible for maintenance of all external wires and hoses, park maintenance crews are not responsible for any damage to these items
 - Quiet hours between 10 p.m. to 8 a.m.
 - All taxes included in rents are due and payable on the first of each month
 - Any actions caused by you contravening the rules will result in immediate eviction from the RV park
 - Tenants/guests are not permitted to roam around RV park or cut across any other RV sites
- The Respondent stated that the Applicants do not have to provide 30 days notice if they plan to vacate
- The sewer line hook-up and water hook-ups are not frost free
- The trailer does not have a deck or any wood attachments
- No skirting on their RV
- Rent receipts show daily pro-rated site payments and GST is included in the rent
- The RV park hired a part time gardener who maintains the grass in and around all RV pads and does not require permission of the residents to access their sites
- The park pays the bills for BC Hydro, water, garbage pick-up, television and internet
- The RV park is in compliance with city zoning and is legally operating as an RV park

The Applicants argue that the Act applies to their situation in the RV park and testified that they pay for their own cable and they do not have free wifi.

The male Applicant stated that they have lived in the park for a long period of time, and especially the female Applicant has lived in the park for 15 years.

The Applicants confirmed they pay a fee for water, and electricity which is included in the rent.

The Applicants say the Act applies to their living situation, but they agree the RV park is evolving into a more permanent residential living space.

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. The Applicants have the onus to prove that a tenancy agreement exists.

Residential Tenancy Policy Guideline #9-Tenancy Agreements and Licences to Occupy ("PG#9") is intended to help parties understand issues that are likely to be relevant. PG#9 clarifies the factors that distinguish a tenancy agreement from a licence to occupy.

Section 2 of the Act states the Act applies to tenancy agreements, manufactured home sites and manufactured home parks. The definition of "tenancy agreement" under the Act does not include a license to occupy.

Some factors that may help distinguish a tenancy agreement from a licence to occupy are discussed in PG#9. No single factor is determinative. PG#9 outlines:

B. TENANCY AGREEMENTS

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:

- *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.*

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.

PG#9 asks me to consider what the parties intended, and all the circumstances surrounding the occupation of the rental site.

Where the home is a permanent primary residence, the Act may apply. 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; and,
- The home has not been moved for a long time.

Some factors that may suggest the Act does not apply are:

- 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 Respondent argued that the water and sewer hook-ups are not frost-free connections. There are no permanent features such as decking or skirting around the

Applicants' 5th wheel trailer. The female Applicant has resided in the park for a total of 15 years, 10 years on the site beside her current site, and 5 years at their current site.

The Respondent retains access to the Applicants' site, and they can enter the Applicants' site without seeking permission. Rent is charged on a per diem basis, and GST is included in the total rent. The park rules stipulate that *"any actions caused by you that contravene these rules will lead to immediate eviction from the RV park."* The Respondent pays for utilities and services, but the Applicants countered that it is included in their rent, so they are paying for it. There are quiet hours imposed on people who are staying in the RV park from 10 p.m. to 8 a.m., and tenants and their guests are not to roam around the RV park or cut across other RV sites.

The Respondent testified that the Applicants do not have to provide 30-day notice when they plan to vacate. The Respondent stated the RV park is operating legally and is in compliance with city zoning regulations.

The Applicants do not have to maintain their own site, as the Respondent hires a gardener to do this work.

The Applicants do not have exclusive possession of the RV site. The Respondent comes and goes on the RV site property while taking care of the gardening work on the grounds. The Applicants pay a per diem rate for their rent, and GST is added to the rent. I find that the Applicants do not have a tenancy agreement governing their living space in the RV park.

I appreciate that the Applicants, at least the female Applicant, have resided in the park for 15 years. But this one factor is not determinative. The Applicants' water and sewer hook-ups are not frost-free connections. There are no permanent features such as decking or skirting around the Applicants' 5th wheel trailer. The Respondent retains access to the Applicants' site without seeking permission. Rent is charged on a per diem basis, and GST is included in the total rent. The park rules stipulate that contraventions of the park rules can result in immediate eviction.

The Respondent pays for the park's utilities and services, and it makes sense that that expense is offset by the Applicants' rent. There are quiet hours imposed in the park, and there are rules restricting movement in certain areas of others' RV sites.

I find on a balance of probabilities that there are more factors that weigh against finding the Applicants have a tenancy in the RV park. I find the agreement is a licence to occupy. So, I find the Act does not apply to the licence to occupy between the parties in this matter, and I do not have jurisdiction to decide this claim.

I decline to decide whether the notice to vacate is valid, proven or cancelled.

As the Applicants were not successful in their claims, I do not grant them recovery of the application filing fee.

Conclusion

The Act does not have jurisdiction in this matter, so I decline to have authority to decide these claims.

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: May 17, 2023

Residential Tenancy Branch