DECISION

Introduction

This hearing dealt with the Applicants' Applications for Dispute Resolution under the *Manufactured Home Park Act* (the "Act") for:

- an order cancelling a One Month Notice to End Tenancy for Cause
- an order requiring the Landlord to comply with the Act, regulation and/or the tenancy agreement
- an order requiring the Landord to pay the cost of the filing fee

Each of the Applicants filed individual applications seeking the same relief. The applications were joined and heard together.

The Respondent was represented by legal counsel at the hearing. The Applicants were represented by a legal advocate on the second hearing day only.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Respondent's legal counsel confirmed that there was no issue with service of the Applicants' Proceeding Packages.

Service of Evidence

The parties confirmed that they received the opposing party's evidence. The Respondent's legal counsel submitted written submissions. I instructed that the Applicants be served with the written submissions after the first hearing. I am satisfied that this was done by the Respondent.

Preliminary Issue – One Month Notice

Each of the applications includes a claim for an order cancelling a One Month Notice to End Tenancy for Cause. However, no One Month Notice was ever served on any of the Applicants. Instead, a letter was sent to each of them indicating that they had to sign a written license to occupy agreement or vacate the park. Given that no One Month Notice was ever served and the parties did not address the merits of this issue, I dismiss it without leave to reapply.

Issues to be Decided

Are the parties governed by a tenancy agreement or a license to occupy?

Should the applicants be entitled to recover the filing fee?

Background and Evidence

The Respondent purchased the Park in 2023. The Park is located in Qualicum Beach, British Columbia. The previous owners of the Park were GL and TL. RR said that the Applicants have lived in the Park for between 5 and 8 years. He said that each of the Applicants have a designated area or site in the Park. Their trailers have not moved. They have all been skirted and some have awnings, fences or sheds. Most also have large exterior propane tanks. They all have frost-free water connections and sewer/power hook-ups. The Respondent admitted that cable and internet are independently arranged by the Applicants and not provided by the Park. RR said until recently, the Park was always occupied by long term residents and did not have transient guests or visitors. RR said there were three rent increases. One increase was verbal. Increases in 2022 and 2023 were both in writing (typed letters from the owners) and gave slightly more than one month notice.

The Applicants also gave the following evidence relating to their individual situations.

The Applicant RR said that he has lived there with his wife KR since 2017. His site is 30 feet wide and 50 feet long with hedges on the sides. On the site, he has a 40-foot fifth wheel trailer. He said he has installed a permanent awning and an insulated shed. He also has a wooden deck with fencing adjacent to the fifth wheel. The trailer has a frost-free water connection. He said that when he moved in, he spoke with the previous owners TL and GL, and was told that the park was a 55+ RV park with long term guests and that they did not want transiency, but instead full time residents. No written agreement was signed. He said he has never paid GST. He said that the owners of the park were welcome to enter the site without notice and that they did not have to ask for permission, because they had an amicable and friendly relationship. The owners would trim the hedges, maintain the grass, and paint the fences. He said they would not enter the trailer.

Rent was initially $425.00 a month and over the years has increased to $650.00. Monthly rent includes water hookup, sewage hookup and hydro hookup. He said that hydro is metered separately; the owners would tell him what to pay on a monthly basis and he would pay it. Cable TV and internet are paid separately and directly to suppliers (Shaw). RR lives in the park full time as his principal residence. According to RR, there are no restrictions on visitors or visiting hours.

RR gave evidence on behalf of NU and CU, who did not attend the first hearing. He said that their site is similar in size to his own. He has a hedge that separates his site from

the road. He said that NU's site is graveled and has room for a couple of parking spots. He said there is a small shed and the trailer is skirted. NU and CU also live full time at the Park.

RR said that NU pays hydro separately to the owners of the Park, and that he believed that he has Shaw service as well. He also has the same water and sewage hookups as RR.

RR submitted a written agreement between the previous owner of the Park and NU. It refers to the owner and NU as "landlord" and "tenant". It states that the tenancy starts on November 1, 2017, is for six months, and may continue for a fixed length of time if both the landlord and the tenant agree. It provides that the Tenant can give 24 hours notice to end the tenancy, and that the Landlord can issue a Notice to end tenancy if rent is not paid on time. It also refers to the agreement as a "tenancy agreement." The agreement refers to Park Rules, which were uploaded as evidence.

MC said he signed a written agreement when he first moved in, on June 30, 2018. The written agreement he submitted is the exact same as the one submitted by NU. He said that he also has skirting around his fifth wheel. He has also built a deck and put up fencing that was provided by the Park. He does not have a shed but has portable storage containers at the back of the site. He said that if the owners needed to enter his site, they could do so, but his permission was required. He said they did not do any maintenance on his site. He said he would do his own maintenance, including repairing the fence. He said he lives full time on the site. He said he has never paid GST. He pays hydro separately to the owner of the Park based on his use, and shares internet and cable with his neighbour (the latter is the account holder). He said there are no restrictions on visiting hours.

MT said she moved into the Park in 2018. She said she assumed it was a permanent living situation when she moved in, and that it has been her full-time residence since moving in. She said she does not pay GST. She purchased her fifth wheel from the previous owner, who moved abroad. She said she lives on a big site with a deck and a gravel driveway. The deck had been installed by the previous owner. She had skirting and permanent awnings installed. She said the previous owners of the Park, TL and GL, would come onto her site to maintain the hedges, but otherwise it is her responsibility to keep the site tidy and clean. She said she was aware of a written agreement that she signed when she moved in, but she did not submit it in evidence. She said that over the years, her rent has increased from $425.00 to $450.00 to $550.00 to $650.00. She was given notice in writing on 2 of the occasions, slightly over one month before the increase took effect.

RK said he lives in a fully skirted and insulated trailer on his site as his principal and only residence. It is surrounded by a vinyl covering. He said there is a full canopy leading from the door of the trailer to the yard and slide coverings which keep the rain off. He said he owns a shed on the site that he installed himself. There is a large fence that runs along the site. He said he has set up his trailer for long term occupancy. He

said he contacted the previous owners of the Park before moving in and that they discussed the fact that it was a long term arrangement. At the time, RK was living in Grand Prairie, Alberta, and sent the previous owners pictures of his trailer to ensure that it was acceptable. RK said he has his own Shaw account and pays electricity separately to the owner of the Park. He said that the owners were welcome on his site at any time and that he had a cordial, friendly relationship with them. He said he signed an agreement when he moved in but was unable to locate it for the hearing. He did not pay GST on rent. He said there are no restrictions on visitors and that he was never charged for overnight guests, despite repeatedly having visitors stay with him.
RB said that he moved into the Park in 2017 and has lived there on a full time basis. He installed fencing on his site (some of which was paid for by himself and some of which was paid for by the previous owner). He has a shed and deck that he built and installed himself. His trailer is skirted and insulated. He gave the previous owner keys to his trailer to allow him access in case of an emergency, but otherwise he was not bothered by the owner. He said he did not pay GST on monthly rent. He said he might have had a written tenancy agreement when he first moved in but did not have a copy any longer. He said he paid hydro separately to the owner of the park and that he had Shaw cable, which he paid for himself.

TW said that he has lived in his trailer in the Park since 2016. He said his trailer is skirted, has a permanent deck, privacy fencing and a shed. He also said that there are permanent slide toppers. He said that hedges were maintained by the previous owners but that he was responsible for weeding. He said his trailer is insured as his permanent residence and that it is his principal and only residence. He said he pays rent to the Park owners and that hydro is paid separately. He also said hot water and sewer are included in the rent and that he has a separate Shaw account. He did not sign an agreement with the previous owners when he moved in (these owners predated GL and TL) – they were friends and he was simply offered a spot to live – for that reason, there was no signed agreement. His understanding was that it was a permanent home. He said that the owners would come over to his site from time to time – they would give advance warning when they were going to trim hedges. Finally, he said he has never paid GST on rent.

RR was cross-examined by the Respondent's legal counsel. Following cross-examination, each of the Applicants said that they agreed with RR's evidence given under cross-examination.

RR acknowledged that the awning and skirting could be removed without damaging the vehicle, and that his RV was movable. He acknowledged that his trailer obtains water through a hose that threads onto the RV. He also said that electricity is not hard wired but is through a cord and plug that attaches to an electrical pole for each unit. Sewage holding tanks are dumped periodically and do not drain directly into the sewer. He also said that he was aware of the park rule limiting the age of RVs (subject to owner approval). He said that other than the written agreements signed by MC and NU, there are no references to the RTA or the MHPTA in documents between the parties, including the Park Rules, nor were there any conversations about the application of the

MHPTA with the previous owners. He said rent increases were not disputed because he was not aware that rent increases were regulated. He said no written notices of entry were ever provided to him, explaining that he had a collegial, friendly and non-adversarial relationship with the owners, and that they could come onto his site as they wished. He acknowledged that no rental receipts were given to him and that there were no communications about whether or not GST was included in rent. He said he was aware of the Park Rules and that they applied to his occupancy.

DP, the representative of the Respondent, gave evidence that he was the owner of the Respondent corporation, which in turn owns the campground. He said he purchased the campground on November 15, 2023. He said that the previous owners told him there were no written tenancies available and that none were provided to him. He also said that he was provided with the Park Rules by the previous owners. He said that the campground is zoned “commercial 5,” which does not allow for a manufactured home park.

Analysis

Are the parties governed by a tenancy agreement or a license to occupy?

The Applicants seek an order that the Respondent comply with the Act, the tenancy agreement and the regulation. In effect, the Applicants are seeking an order the Act applies to their agreement with the Respondent.

Policy Guideline 9, Tenancy Agreements and Licenses to Occupy, sets out factors which distinguish a tenancy agreement from a license to occupy. The Policy Guideline states that no single factor is determinative:

> **The home is a permanent primary residence**
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> In *Steeves v. Oak Bay Marina Ltd*., 2008 BCSC 1371, the BC Supreme Court found:
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> 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.
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> 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;

• The home has not been moved for a long time.

See also: *Wiebe v Olsen*, 2019 BCSC 1740.

Regarding RV parks or campgrounds, the Policy Guideline says, citing *Steeves*, 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." It cites *D. & A. Investments Inc. v. Hawley*, 2008 BCSC 937 in support of the proposition that "if the home is a permanent primary residence then the MHPTA may apply even if the home is in an RV park or campground."

The Policy Guideline lists out factors that suggest that the MHPTA does not apply (ie. indicating a license to occupy):

- 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.

Regarding the issue of zoning, the Policy Guideline states as follows:

PROPERTY ZONING

In *Powell v. British Columbia (Residential Tenancy Branch)*, 2016 BCSC 1835, the Court held that municipal zoning may be relevant in that could inform the nature of the legal relationship between an owner and occupier. While zoning may inform this question, it is the actual use and nature of the agreement between the owner and occupier that determines whether there is a tenancy agreement or licence to occupy.

The fact that the landlord is not in compliance with local bylaws does not invalidate a tenancy agreement. An arbitrator may find that a tenancy agreement exists under the MHPTA, even if the property the rental pad is on is not zoned for use as a manufactured home park. As the Court pointed out in *Wiebe v Olsen*, 2019 BCSC 1740, "there is no statutory requirement that a landlord's property meet zoning requirements of a manufactured home park in order to fall within the purview of the MHPTA."

Having set out the applicable policy and law, I will now consider what facts have been proven.

I make the following factual findings, which I find apply to each of the Applicants:

- They have all lived in the Park as full time, year-round residents. This was not contested by the Respondent.
- They have all lived in the Park continuously for an extended period of time (5-8 years). This was not contested by the Respondent.
- They have not moved their homes for the duration of their time living in the Park. This was not contested by the Respondent.
- They all have added features including skirting, decks and sheds. This was not contested by the Respondent. In the cross-examination of RR, the Respondent suggested that the features were not permanent because they could be removed (ie. unscrewed) without permanently damaging the vehicles. This was not disputed by the Applicants. I nonetheless find that the features added by the Applicants are permanent. They are clearly always present and would require considerable effort to remove. I find this is sufficient to be considered “permanent fixtures”.
- They all pay rent on a monthly basis. This was not disputed by the Respondent.
- Until the ownership change, they did not pay GST on rent. I make this finding because they all said that they did not pay GST or were not aware of GST being charged by the previous owners. While it is possible that the previous owners remitted GST without the knowledge of the Applicants, as the Respondnet suggested in oral submissions, the Respondent did not provide any evidence showing this to be the case. The Respondent could have called the previous owners as witnesses (or requested that I issue a summons requiring them to provide oral evidence or documents) but did not do so. In the absence of evidence indicating otherwise, I find that the Applicants did not pay GST until recently.
- They all pay for electricity based on usage. This payment is made in addition to the monthly rent. This was not contested by the Respondent.
- The trailers obtain electricity through a cord and plug that attaches to an electrical pole for each unit. This was admitted by RR under cross-examination.
- Sewage holding tanks are dumped periodically and do not drain directly into the sewer. This was admitted by RR under cross-examination.
- They all have cable TV/internet which is not provided by the Park and is arranged directly with an external service provider. This was not contested by the Respondent.
- The Applicants were generally aware of the Park Rules. This was admitted by RR under cross-examination.
- The Park Rules provide that “anyone found behaving inappropriately which includes using profanity will be asked to leave the park.” This is in the Park Rules submitted by the Applicants.
- The Park Rules provide a $5.00 per night charge for any person staying at the Park who is not a registered guest. This was admitted by the Applicants.

- The $5.00 a night charge was not enforced by the previous owners of the Park. This was not contested by the Respondent.
- There are no restrictions, either in the Park Rules or elsewhere, on visiting hours. This was admitted by the Respondent.
- The Park Rules do not refer to the *Residential Tenancy Act* or the *Manufactured Homes Park Act*.
- Other than the written agreements submitted by MC and NU, there are no documents referring, directly or indirectly, to either the *Residential Tenancy Act* or the *Manufactured Homes Park Act.* This was admitted by the Applicants.
- The previous owners could access the sites without giving formal notice. This was acknowledged by RR under cross-examination, who said they had a friendly, collegial relationship, and that the previous owners could come on his site as they wished. The previous owners would trim the hedges on MT, RR, and TW's sites.
- The previous owners increased rent in excess of the yearly rent limit. On at least two of the three occasions, they did not give 3 months' notice.

In addition, I make the following findings regarding MC and NU

- They have signed agreements in writing which describe them as tenants and the owner of the park as landlord. This was not contested by the Respondent.
- The signed agreements are still in effect. The Respondent disputed this but provided no evidence in support of this claim. In the absence of evidence indicating otherwise, I find that the signed agreements signed by MC and NU continue to apply.

It is not disputed that the Park is zoned C5 commercial and that this type of zoning excludes a manufactured home park.

I find that the Applicants have demonstrated that they have exclusive possession of their site for a month-to-month term and that rent is paid on a monthly basis. While it is true that the owners occasionally accessed the Applicants' sites (for example to trim hedges), I do not find that this changes the fact that there was exclusive possession by the Applicants. Evidence was given that the sites are clearly delineated and not occupied by anyone other than the Applicants. According to Policy Guideline 9, this creates a presumption of a tenancy agreement, shifting the evidentiary onus to the Respondent to establish to establish that a tenancy did not exist.

In weighing the factors listed in Policy Guideline 9 and re-stated above, it is clear to me that they overwhelmingly suggest that the legal relationship between each of the Applicants and the Respondent is a tenancy agreement and that the Respondent has therefore not met its evidentiary onus. Each of the trailers has frost-free water connections, they have permanent features such as decks and skirting, the Applicants live in their trailers year-round, and the homes have not moved since the Applicants moved in (5-8 years). It is clear that permanence characterizes the relationship between the parties. I make this finding notwithstanding the fact that electricity is obtained

through a cord and plug (and is not “hard wired”) and sewage holding tanks are dumped periodically and do not drain directly into the sewer.

In addition, the fact that rent is charged monthly with no GST, the Applicants pay for electricity, cable TV and wi-fi, and there are no restrictions on visiting hours all further suggest a tenancy agreement rather than a license to occupy.

I find that the features of permanence reflected in the evidence also outweigh the fact that the previous owners of the Park often accessed the sites without notice, the Park Rules, the zoning, access to the sites by the owners, and rent increases.

Regarding the Park Rules, the Respondent said, both in oral and written submissions (at para 12) that the Park Rules reflect the intention of the parties and are indicative of the nature of their occupation. For example, the Park Rules refer to “guests” rather than “tenants,” allow for immediate eviction in certain circumstances (breach of rules, breach of quiet time), require notice of visitors, and place restrictions on permitted activities within a site.

While it is true that the Park Rules may not be consistent with the Act, I do not find that they show that the parties did not intend to create a Landlord-Tenant relationship, that the Act was not meant to apply, or that permanent occupation was not intended or expected when the Applicants moved in. Instead, I find the Park Rules to be consistent with the informal way in which the Park was run. Several Applicants testified about the friendly rapport they had with the owners and the fact that it was a community. Uncontradicted evidence was given by MT that the owners did not seek to make a profit and instead only wanted to break even. It is unsurprising, given the informal nature in which the Park was run, that the Park Rules were drafted in a manner inconsistent with the Act.

Similarly, the fact that the owners accessed most of the Applicants’ property to trim hedges and without giving proper notice under the Act, as well as the monthly rent increases above the legal limit, are not determinative. They again reflect the way in which the Park was run.

The Respondent conceded that zoning is not determinative. As the Court stated in *Powell v. British Columbia (Residential Tenancy Branch)*, 2016 BCSC 1835, actual use and the nature of the agreement is more relevant. Here, the actual use by the Applicants indicates permanent occupation. In addition, two written agreements submitted in evidence (MC and NU) are tenancy agreements (using the language landlord and tenant,

Because the parties are in a Landlord-Tenant relationship, I order the Respondent to comply with the Act, the tenancy agreements and the regulation.

Should the applicants be entitled to recover the filing fee?

The Respondent argued that I should consider whether the filing fee should be recovered by the Applicants. In the circumstances, I find that the Applicants had no choice but to bring applications to confirm jurisdiction, given the position taken by the Respondent. In light of their success and under section 65 of the Act, it is appropriate to order repayment of the filing fee. The Applicants are permitted to deduct $100.00 from a future rent payment owing to the Respondent.

Conclusion

Each of the Applications requiring the Respondent to comply with the Act, regulation or tenancy agreement is granted. The parties are in a Landlord-Tenant relationship and the Respondent must comply with the Act, regulation and tenancy agreement.

In their application, the Applicants referred to a rent increase that they say was not in compliance with the Act. The Applicants are free to bring new applications in relation to the alleged rent increase.

Each of the claims to dispute a One Month Notice for Cause is dismissed without leave to reapply. The Applicants are, however, free to dispute at the RTB any future Notice in relation to their tenancy.

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: April 10, 2024

Residential Tenancy Branch