

## **DECISION**

### **Introduction**

This hearing dealt with the Applicants' joined applications for dispute resolution under the *Manufactured Home Park Tenancy Act* (the "Act"), regarding claims to:

- dispute a 10 day notice to end tenancy for unpaid rent under section 39 of the Act;
- dispute a rent increase under section 34 of the Act;
- seek an order that the Respondent comply with the Act, regulation, or tenancy agreement under section 55(3) of the Act; and
- recover the filing fee from the Respondent under section 65(1) of the Act.

Applicants TB, SP, SS, and CF attended this hearing. KB and MK attended this hearing on behalf of the Respondent. All attendees gave testimony under oath.

### **Preliminary Matters**

#### **Applicants Vacated and Applications Dismissed for Mootness**

The present applications concern five sites located in an RV park owned by the Respondent, as follows:

- Site #2: TB and SP
- Site #3: CF
- Site #12: SS
- Site #20: CM
- Site #31: CS

By the time of this hearing, all applicants except CF had vacated their respective site.

It was acknowledged that the claims raised in the applications made by TB, SP, and SS were moot since they have already left the park. I find the same applies to the claims raised in CS and CM's applications. I further note that CS and CM did not attend this hearing or appoint anyone to attend this hearing on their behalf. Therefore, pursuant to section 55(4)(b) of the Act, I dismiss the applications made by TB, SP, SS, CS, and CM without leave to re-apply. I make no findings on the merits of those applications, including whether the Act applies to those disputes.

## **Service of Notice of Dispute Resolution Proceeding Package, Amendment, and Evidence**

The Respondent's representatives confirmed receipt of CF's notice of dispute resolution proceeding package, amendment, and evidence. They also confirmed receipt of evidence submitted as part of TB and SP's application, which I have considered for the purpose of this decision.

The applicants in attendance confirmed receipt of the Respondent's documentary evidence.

The parties were asked to upload a copy of a 10 day notice to end tenancy dated June 2, 2024 (the "10 Day Notice") and the old park rules after the hearing, as those documents were exchanged by the parties but could not be found in the uploads to the Residential Tenancy Branch. The parties uploaded these documents after the hearing as requested, and I have considered them for the purpose of making this decision.

## **Correction of Respondent**

CF's application originally named LF as the respondent. LF is said to be a person formerly on payroll with the Respondent. By consent of the parties, I have amended CF's application to replace LF with the Respondent.

## **Issues to be Decided**

1. Does the Act apply to CF's rental of site #3?
2. Should the 10 Day Notice be cancelled?
3. Is CF entitled to dispute a rent increase?
4. Is CF entitled to an order that the Respondent comply with the Act, the regulation, or tenancy agreement?
5. Is CF entitled to recover the filing fee?

## **Background and Evidence**

I have reviewed all the evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

CF has resided in his RV at site #3 since May 31, 2018. At that time, the park was under different ownership.

On or around March 21, 2024, the previous owner issued notices advising renters that the park was being sold to the Respondent effective April 1, 2024, and that the renters would no longer have an “occupancy arrangement” with the previous owner.

The Respondent took over the park in April 2024. CF received a park rules package from the Respondent which includes a document stating that the rate for monthly rentals would now be \$1,200.00 per month plus GST and PST.

On May 13, 2024, CF received a notice from the Respondent regarding a complete closure of the park for system upgrades and total removal of all trailers, vehicles, and personal possessions by June 2, 2024.

On June 2, 2024, the Respondent issued the 10 Day Notice to CF with an effective date of June 16, 2024. The stated reason for ending the tenancy was a failure to pay rent of \$700.00 due on May 31, 2024. CF received a copy of the 10 Day Notice in person on June 2, 2024. On June 3, 2024, CF amended his application to add a claim to dispute the 10 Day Notice.

CF gave the following testimony and evidence:

- CF has been a permanent resident of the park since May 2018. CF lives in his RV year-round.
- CF has always paid \$600.00 per month from April to October, and \$700.00 per month from November to March, due on the first day of each month. There is a \$100.00 increase during the winter months to help with the utilities, as everyone runs electric heaters. The monthly rate includes electricity, water, and sewer. CF never paid taxes on the rate charged by the previous owner. The rates that CF pays are different from those paid by others in the park.
- CF has hookups for utilities and a winterizing hose to prevent the water hose from freezing in winter. CF also has skirting around the RV bottom to help keep the draft down and keep warm.
- CF pays for his own cable and internet. CF gets and pays for propane from an offsite contractor that comes around the park.
- Park rules have been issued from time to time, though CF does not have any copies. CF does not recall any rules about access. Anybody can come and go as they please. The previous owner wanted a little heads up, or one month’s notice, if a resident was leaving, so they could have another person come in. Asking residents to leave the park was a gray area. The previous managers did everything verbally. They were older people who did not know the laws for this kind of thing.
- Other residents were given permission to install decks and porches. People have used the park address as their permanent address on their driver’s licences.
- Before, there was no problem for residents to get mail. The park had one mailbox and the managers would distribute everyone’s mail.
- When the Respondent came in, they demanded a double rent increase for most people without proper notice. They shut off the mail and tried to close sites due to

electrical problems. There is nothing wrong with the electrical. Everything had been done by licensed contractors.

- CF is happy to pay the rent and has no problem paying a rent increase allowed under the Act. CF has rent cheques ready for June and July 2024. The Respondent refused to accept rent because CF would not sign a guest registration. CF is a long-term tenant and not a guest. CF's information is already on file. CF documented the Respondent's refusal to accept rent on June 1, 2024. CF's payment of May 2024 rent was accepted by the Respondent on May 1, 2024, after CF was initially told by the onsite manager that she could not accept rent as there is a possibility that the park would be shut down due to electrical issues.

TB and SP gave the following testimony:

- The previous managers told RB and SP there was no tenancy agreement, everything was verbal, and just to pay their rent on time.
- When TB and SP arrived in August 2023, they paid \$900.00 per month in the summer and \$1,000.00 per month in the winter. GST and PST were included in these rental amounts. Different permanent people came in and were paying a monthly rental amount that changed depending on the year they came to the park. That was how the previous owner increased the rent.
- The previous managers encouraged people to put a skirt on their trailer, add a deck, and live there permanently for a couple of years. People watered their own lawn and were encouraged to make the place their home.
- It is not the renters' fault if the park is not properly zoned as a manufactured home park.

According to the August 2023 park rules submitted by TB and SP:

- Everyone's spot must be neat and tidy at all times. No fridges, freezers or indoor furniture outside.
- Renters must get permission to build steps, decks etc.
- Each spot has a driveway - renters could only park their vehicle or visitor's vehicle there. There was no visitor parking.
- Monthly renters were responsible to water their own lawn.
- The park owner/managers were trying to keep this park as neat and tidy as possible "for the enjoyment of all our people who live here and visit us"

SS gave the following testimony:

- SS did not receive discounted rent for work that she did around the park. SS used to do some work for the previous managers. SS was paid \$400.00 a month for that job. It was paid separately instead rather than taken off SS's rent.

KB and MK gave the following testimony and evidence on behalf of the Respondent:

- The park is an RV park and the Act does not apply. All trailers have wheels. The applicants do not have any rental agreements with the previous owner. There was no set amount of rent, as it varied depending on the time of the year. Some renters paid discounted rent for working such as cleaning, or not using the AC. There were no site inspections done for moving in or moving out. There was no physical address provided for mail service. The park is zoned as an RV park and the Respondent would not be able to obtain zoning for a manufactured home park due to insufficient setback for the sites. There are no pads and everything is grass and gravel.
- The previous owner had stated that all contracts with the guests were null and void. When the Respondent purchased the park, it was free and clear with no contracts.
- The Respondent was seeking to increase the monthly rate to \$1,200.00 plus taxes. The Respondent would also agree \$900.00 per month.
- The electrical work previously done in the park was done without permits. Some of the existing trailers (including site #3) will need to be moved to different sites so the Respondent can address the electrical problems. The Respondent was not taking rent payment in hopes people will not be financially committed and move.
- The Respondent was trying to get CF and the others to sign the guest register, which asks them to provide their name, ID, and agreement with the park rules. These are things that the Respondent needs for Revenue Canada and insurance purposes.
- The Respondent was asked to issue the 10 Day Notice by the Compliance and Enforcement Unit. If going by the rental rules of the Act, the Respondent would like an order of possession for site #3 as CF has not paid rent for June or July 2024.

## **Analysis**

### **1. Does the Act apply to CF's rental of site #3?**

Section 1 of the Act defines a "tenancy agreement" to mean 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.

A "manufactured home" means a structure, other than a float home, whether or not ordinarily equipped with wheels, that is (a) designed, constructed or manufactured to be moved from one place to another by being towed or carried, and (b) used or intended to be used as living accommodation. A manufactured home site is a site in a manufactured

home park that is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home.

Under a tenancy agreement, the tenant has exclusive possession of the site for a term, which may be on a monthly or other periodic basis.

As explained in Residential Tenancy Policy Guideline 9. Tenancy Agreements and Licences to Occupy ("PG 9"), the definition of tenancy agreement under the Act does not include a "licence to occupy".

Under a licence to occupy, a person is given permission to use a site, but that permission may be revoked at any time. The Residential Tenancy Branch does not have the authority under the Act to determine disputes regarding licences to occupy.

It is up to the party making an application under the Act 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 site.

According to PG 9, 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 site, subject to the landlord's right to access the site, for a term and
- the tenant pays a fixed amount for rent

Based on the evidence presented, I find CF verbally agreed with the previous owner of the park to rent site #3 on a monthly basis.

I find the evidence indicates that CF has exclusive possession of site #3. I do not find that under the previous park rules, the owner retained access to or control over portions of CF's site. I find the previous rules required monthly renters to water their own lawns.

In addition, I accept CF's evidence that he has paid rent in the same manner since moving to the site in May 2018. I find that in essence, CF's agreement with the previous owner was to pay rent of \$600.00 per month due on the first day of each month, plus a flat rate utilities surcharge of \$100.00 due on the first day of each month for the winter months from November to March. I find the purpose of the \$100.00 surcharge was to cover the cost of extra utilities (e.g. electricity) expected to be consumed during the winter months. I find that viewed in this way, CF has been paying a fixed amount for rent, namely \$600.00 per month.

I conclude that there is a presumption that CF has a verbal tenancy agreement for the rental of site #3.

PG 9 sets out additional factors that may help distinguish a tenancy agreement from a licence to occupy. No single factor is determinative.

In *Steeves v. Oak Bay Marina Ltd.*, 2008 BCSC 1371, the BC Supreme Court held that the Act 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. If a home is a permanent primary residence, then the Act may apply even if the home is in an RV park or campground (see also *D. & A. Investments Inc. v. Hawley*, 2008 BCSC 937).

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

Factors that may suggest the Act does not apply include:

- the park 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
- there are restricted visiting hours
- the parties have a family or personal relationship, and occupancy is given because of generosity rather than business considerations

In CF's case, I find the following factors weigh in favour of a tenancy agreement:

- I find CF occupies his RV home as his primary residence and lives in it year-round. I find CF has occupied site #3 for a continuous period of 6 years, and CF's RV home has not been moved during this time.
- I find CF's RV home is hooked up to services and facilities meant for permanent housing, such as a winterizing hose. I find CF has added skirting that the previous owner has expressly or implicitly permitted.
- I find CF pays a monthly, rather than daily or weekly, rate for his rental.

- I find CF did not pay a security deposit (section 17(2) of the Act prohibits a landlord from requiring or accepting a security deposit in respect of a manufactured home site tenancy).
- I do not find the previous owner or managers had the right to enter CF's site without notice. I find there is insufficient evidence that it was agreed CF could be evicted without a reason or may vacate without notice. I find there is insufficient evidence that there were rules restricting visiting hours.

On the other hand, I accept that CF does not pay utility providers directly for utilities such as water and electricity, so these utilities can be said to be paid by the park owner. I also accept that taxes may have been included in the rates charged by the previous owner, though I do not find there is evidence of any breakdown.

Additionally, I accept the Respondent's evidence that the park is zoned as an RV park and not as a manufactured home park. However, I note while this may be relevant for informing the nature of the legal relationship between a park owner and occupier, 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. 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 Act (see *Wiebe v Olsen*, 2019 BCSC 1740).

Considering the above as a whole, I find the factors that support a tenancy agreement in CF's case outweigh those that do not. I find CF's situation to fall under the type of living arrangement that the Act is intended regulate as described by the Court in *Steeves*.

I conclude that CF occupies site #3 pursuant to a tenancy agreement, and the Act applies to CF's tenancy.

As such, I find that any notice given by the previous owner in March 2024 to end CF's tenancy due to the sale of the park would be of no effect under section 5(2) of the Act. I find that by taking over ownership of the park, the Respondent assumed the rights and obligations of a landlord under the Act and CF's verbal tenancy agreement with the previous owner.

I now turn to the claims raised in CF's application.

## **2. Should the 10 Day Notice be cancelled?**

Section 20(1) of the Act states that a tenant must pay rent when it is due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

If a tenant does not pay rent when due, section 39 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.



In this case, I have reviewed the 10 Day Notice and I find that it complies with section 45 of the Act in form and content. I find CF received a copy of the 10 Day Notice on June 2, 2024 and made a claim to dispute it the following day, within the time limit under section 39(4)(b) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Firstly, I do not find that rent of \$700.00 was due on May 31, 2024 as stated in the 10 Day Notice. I have found above that rent is \$600.00 due on the first day of each month. I find CF paid rent of \$600.00 on May 1, 2024 and was not due to pay the rent again until June 1, 2024.

Secondly, I do not find CF can be said to have failed to pay rent of \$600.00 due on June 1, 2024. I find CF went to pay rent that day but was advised by the Respondent's onsite manager and KB that they cannot accept rent if CF did not sign the guest register. I also find it is acknowledged that because of the electrical issues, the Respondent was "not taking rent payment in hopes people will not be financially committed and move". Under these circumstances, I do not find the Respondent imposing conditions for the acceptance of rent or refusing to accept rent can be taken as CF's failure to pay rent. I accept that as of the date of this hearing, CF has rent cheques for June and July 2024 available to pay to the Respondent.

For these reasons, I do not find the Respondent to have established that CF's tenancy should end for non-payment of rent under the 10 Day Notice. Accordingly, I order that the 10 Day Notice is cancelled.

### **3. Is CF entitled to dispute a rent increase?**

Section 34 of the Act requires that a landlord must not increase rent except in accordance with Part 4 of the Act.

Under section 35 of the Act:

- a landlord must not impose a rent increase for at least 12 months after the start of the tenancy and each subsequent rent increase
- a landlord must give a tenant notice of rent increase at least 3 months before the effective date of the increase
- a notice of a rent increase must be in the approved form

Under section 36(1) of the Act, a landlord may impose a rent increase only up to the amount that is:

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under section 36(3) of the Act; or

(c) agreed to by the tenant in writing.

The maximum annual rent increase allowed under the regulations in 2024 is 3.5%. This would be equivalent to a \$21.00 increase on CF's monthly rent of \$600.00.

I find it is undisputed that the Respondent's proposed rent increases do not comply with the Act. As I have found that the Act applies to CF's tenancy, I find CF is entitled to an order that the Respondent comply with the rent increase provisions of the Act when imposing any rent increase on CF.

#### **4. Is CF entitled to an order that the Respondent comply with the Act, the regulation, or tenancy agreement?**

Under section 55(3) of the Act, the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement.

Regarding this claim, CF states on his application as follows:

landlord is intimidating / harassing. landlord constantly does drive bys, blows the horn of his pickup truck and yells demands to people from sitting in his pickup. He has also threatened tenants about "shutting thier power off" if they dont pay his rent demand. There has been one trailer removed from the property. Heresay is that the landlord physically removed the tenant from the property before removing the trailer from the park.

I note I do not find that CF can seek orders on behalf of other renters. I emphasize that I have not made any finding as to whether the Act applies to any other renter of the park. I accept that the circumstances of the other renters may be different from CF's circumstances.

Given my finding on jurisdiction with respect to CF's tenancy, the cancellation of the 10 Day Notice, and the orders that follow in the conclusion section below regarding payment of rent and rent increases, I do not find it is necessary to make additional orders under this part.

CF is at liberty to make another application for dispute resolution should any issue arise affecting CF's right to quiet enjoyment under section 22 of the Act.

#### **5. Is CF entitled to recover the filing fee?**

As CF has been successful in his application, I find CF is entitled to recover the \$100.00 filing fee from the Respondent under section 65(1) of the Act. Pursuant to section 65(2) of the Act, I authorize CF to deduct this amount from any rent due to the Respondent.

## Conclusion

The Act applies to CF's rental of site #3.

The 10 Day Notice is cancelled. CF's tenancy will continue until ended in accordance with the Act.

Pursuant to section 55(3) of the Act:

1. I order CF and the Respondent to arrange for payment of all rent due and owing since June 2024 by September 1, 2024. If CF does not pay the outstanding amount by September 1, 2024, the Respondent is at liberty to issue a new 10 day notice to end tenancy for unpaid rent.
2. I order the Respondent to comply with the rent increase provisions of the Act in respect of CF's tenancy.

CF's claim to recover the \$100.00 filing fee is granted. CF may deduct this amount from any rent due to the Respondent.

The remaining applications made by the other applicants are dismissed under section 55(4)(b) of the Act.

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: August 14, 2024

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Residential Tenancy Branch