



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TIMBERLAND MOTEL & CAMPGROUND
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR MNDC OLC O FF

Preliminary Issues

Upon review of the Tenant's application for dispute resolution the Tenant stated she wished to amend her application to include a request to dispute an additional rent increase and withdraw her request to cancel the notice to end tenancy.

The Tenant listed in the details of the dispute a request to clarify jurisdiction under the *Manufactured Home Park Tenancy Act*, proof for hydro amounts charged, and to dispute the additional rent increase. She testified that since making her application the Landlord hired a bailiff and had her evicted from the park. Therefore, she no longer needed an order to cancel the eviction notice or to have the Landlord comply with the Act.

Based on the aforementioned, I find the Landlord was aware of the Tenant's request to dispute the rent increase. The Landlord did not dispute the request to amend the application. Accordingly, I amended the application to include the request to dispute the rent increase, pursuant to section 57 (3)(c) of the *Act*.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on October 10, 2013, by the Tenant to dispute the additional rent increase and to obtain a Monetary Order for the return of their security deposit.

The parties appeared at the teleconference hearing and gave affirmed testimony. The Tenant affirmed that she did not serve the Landlord with copies of her evidence.

Section 3.1 of the *Residential Tenancy Branch Rules of Procedure* stipulates that an applicant must serve the *Residential Tenancy Branch* and the other party copies of all the evidence they wish to rely upon. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Landlord has not been served copies of the Tenant's

evidence I find that that evidence cannot be considered in my decision. I did however consider the Tenant's testimony.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Does this matter fall within the jurisdiction of the *Manufactured Home Park Tenancy Act*?
2. If so, was the rent increased in accordance with the Act?
3. If so, has the Tenant proven entitlement to a Monetary Order?

Background and Evidence

The Tenant testified that she is of the opinion that her tenancy fell under the jurisdiction of the *Manufactured Home Park Tenancy Act* because she was living in her trailer full time as her primary residence. She moved onto her site in November 2011 and was told her rent would be \$420.00 per month. She was granted a discount if she paid her rent in cash and on time and was paying only \$400.00 per month with the discount. Her tenancy included: a designated pad/site area; electrical, sewer and water hook ups; she lives there all year, she is required to follow park rules, she does not pay GST or PST on her rent, her rent and hydro were paid monthly, and she was not required to pay property taxes. She does not recall signing a tenancy agreement but does recall signing a document for the rules.

The Landlord argued that this arrangement does not fall under the *Manufactured Home Park Tenancy Act* because they are running a R.V. park and motel. She stated she was of the opinion that the Tenant was occupying the site under the Hotel Keepers Act. They do not have a written tenancy agreement but the Tenant did sign a document agreeing to the park rules.

The Tenant stated she was seeking compensation for the illegal rent increase that was forced upon her. She read into evidence, the rent increase letter that increased her rent to \$450.00 per month effective April 2013. She said she was still allowed the discount of \$20.00 per month because she continued to pay in cash and on time. She paid the additional rent increase of \$30.00 per month for six months (April to September 2013). Her last month was paid with a money order.

The Landlord confirmed that a letter was issued February 14, 2013, raising rent to \$450.00 per month effective April 2013. She stated that the Tenant's rent was lowered by \$20.00 per month because her site was a smaller, corner unit, and not because she was paying in cash. She confirmed that the sites are clearly defined and designated to each occupant.

The Tenant testified that she was also seeking to recover money she had paid for hydro costs. She said she thinks she has been overcharged hydro costs from the Landlord because some months were a lot higher than other months. She argued that she has never been given copies of hydro bills and that she was required to pay the amount listed in the Landlord's book. She has always made the payments when she paid her rent.

The Landlord stated that each site has a separate hydro meter which is read by park staff and recorded in a book. The Tenant agreed to pay the monthly usage at \$0.07 per kwh plus the GST and PST and has been doing so all throughout her tenancy.

In closing, I informed the parties that I needed additional information in order to finalize my decision. I instructed the Landlord to send copies of the following documents, to both the *Residential Tenancy Branch* and the Tenant, no later than November 28, 2013: the park rules; receipts for rent paid by the Tenant; the notice of rent increase; and the ledger used to determine hydro charges for each site.

Analysis

Thirty three (33) pages of evidence documents were received from the Landlord on November 21, 2013. This evidence included the documents requested during the hearing, as listed above, and two signed documents titled "Park Rules" dated November 19, 2011 and April 29, 2013.

The Tenant filed an Application for Dispute Resolution and checked off that she was applying under the *Manufactured Home Park Tenancy Act (MHPTA)*; however, the

Landlord argued that the matter relates to an R.V. Park and does not fall under the MHPTA. As such, my determination of jurisdiction will be dictated by the *MHPTA*.

Section 2 of the *MHPTA* stipulates the Act applies to tenancy agreements, manufactured home sites and manufactured home parks. I must determine if there is a tenancy agreement or a license to occupy.

The Residential Tenancy Policy Guidelines #9 clarifies the difference between a tenancy agreement and a license to occupy. A license to occupy gives permission to the licensee to use the site or property but that permission may be revoked at any time. A tenancy agreement gives exclusive possession of the site for a term, which can include month to month arrangements.

Some of the factors that I must consider in determining jurisdiction include:

- Requirement for payment of a security deposit;
- Was the R.V. home occupied for recreational purposes rather than residential use;
- The R.V. home is located in a campground or RV park;
- The rent is calculated on a daily basis and tax is calculated on the rent or is rent calculated on a monthly basis without taxes;
- Is there access to services, facilities, usually provided in ordinary tenancies;
- Visiting hours are imposed; and
- Either party can end the tenancy without notice.

In this case there was no requirement to pay a security deposit and there was no prior written agreement that the occupier or tenant may be evicted without a reason or that the tenant may vacate without notice.

There is indication of granting exclusive possession of the site to the occupant as there are distinct boundaries to the rental site that is deemed to be the Tenant's rental site.

The undisputed testimony was the Tenant's trailer would be considered an R.V. trailer; however the intent has been for the Tenant to occupy the trailer year round, as she has done since November 2011. The Tenant's rent is paid monthly and does not include charges of GST or PST and is inclusive of such services such as water and sewer. Furthermore, there is no requirement of the Tenant to provide the Landlord specific dates of their stay, a permanent address, including phone and email; as it is understood that the R.V. site is to be the Tenant's permanent address.

Although the Tenant signed a document outlining the rules, there was no written tenancy agreement signed. In the absence of a written agreement between the parties I must base my findings on the verbal agreement that was described during the hearing.

The *Act* defines a “**tenancy agreement**” as 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.

Section 84 of the *Act* stipulates that except as modified or varied under this *Act*, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Manufactured Home Park Tenancy Act*. Accordingly, I accept jurisdiction under the *Manufactured Home Park Tenancy Act*.

Sections 34, 35, and 36 of the *Act* govern the timing, notice, and amount of rent increases that can be enforced [these sections have been pasted at the end of this decision]. The *Act* requires that a notice of rent increase be served on the prescribed form three months prior to the effective date of an increase. The legislated allowable rent increase for 2013 is 3.8%.

In this case the Landlord instituted a rent increase in a letter, without using the required form, did not provide three months notice, and increased the Tenant's rent by 7.5%. Accordingly, I find the Landlord imposed a rent increase that does not comply with the *Act*.

Section 36 (5) of the *Act* stipulates that if a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase. Therefore, I find the Tenant is entitled to monetary compensation to recover the \$30.00 per month illegal rent increase which was paid for six months (April – September 2013) for the total amount of **\$180.00**.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

The Tenant has applied to recover \$300.00 in utilities costs which she argued was the amount she overpaid for hydro. The Landlord disputed this claim and provided copies of the log book which indicate the meter readings and charges for each month.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Tenant has the burden to prove she was overcharged hydro costs during course of the tenancy. Accordingly, the only evidence before me from the Tenant was disputed verbal testimony which I find insufficient to meet the Tenant's burden of proof. Accordingly, I dismiss the Tenant's claim for reimbursement of hydro costs, without leave to reapply.

The Tenant has been partially successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$230.00** (\$180.00 + \$50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: December 2, 2013

Residential Tenancy Branch

Rent increases

34 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

35 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase

36 (1) A landlord may impose a rent increase only up to the amount

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-11.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

