Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hezz Camp Co. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC

Introduction

This hearing dealt with an application by the tenant for orders setting aside a 1 Month Notice to End Tenancy for Cause and allowing her more time to make that application. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

- Does the Residential Tenancy Branch have jurisdiction over this dispute?
- If so, does the landlord have reason, within the meaning of the *Manufactured Home Park Tenancy Act,* to end the tenancy?

Background and Evidence

The tenant bought this 1996 park model trailer in 2005. When she bought it a room and a deck had already been added on. She has not had a written tenancy agreement with any owner of the park. Initially, the rent was $280.00 a month. The tenant has always paid GST on the rent and hydro.

The trailer is located on a property that has 92 sites plus cabins, all of which are rented on a nightly, weekly or monthly basis. The landlord bought this park in 1995. She acknowledges that when she bought the park a number of people were living there full-time and had been doing so for some time. The parties disagree about the number of people who now live in the park full-time. The tenant said many people live there full-time; the landlord said that while many trailers are there full-time the owners of those trailers come and go.

Currently the tenant pays $363.30 a month plus hydro. The landlord testified that the rent is calculated on a daily basis. The summer rate is $42.00 per night; the winter rate is $43.00 per night; and the long-term rate is $13.33 per night. The daily rate includes

use of the site, wireless Internet, bulk cable package, garbage pick-up, water and sewer. Renters paying the long-term rate must also pay for hydro. Each site is separately metered and the hydro charge appears as a separate item on the receipt. The higher daily rates include hydro.

The wording of the receipts has changed over the years but both copies presented to me say "This site is for vacation purposes only".

The landlord has always collected GST on all rents paid. The requirement to collect GST was confirmed in a CRA ruling dated August 31, 2011.

In 2009 a carport was added to the site with the landlord's permission. The landlord testified that she was very particular about the structure that was approved; making sure that it could be easily removed. She says this has been her policy for any structure erected since she bought the park.

The landlord testified that many people leave their trailers on their site year round and basically use them as a vacation property. Most of these people pay the long-term rate but some pay the summer rate all year round.

The landlord has never collected a security deposit from any renter nor has it ever entered into a written tenancy agreement with any renter.

This trailer was the tenant's permanent home until the spring of 2013 when she bought a house in a different community where she now lives full time. She is attempting to sell the trailer *in situ*. The tenant did not want to leave the trailer empty so she has rented it to someone known to the landlord and herself. The landlord acknowledged that the tenant did speak to her in advance and she told the tenant that she did not have a problem with the arrangement. According to the tenant, this arrangement will only last until the trailer is sold.

In the fall of 2013 the municipal authority inspected the park. It subsequently sent the landlord a letter dated October 31, 2013, which stated:

> "It has come to the attention of this office that several of the recreational vehicles on your property are being used for permanent occupancy/residency. We would remind you that your property is zoned Commercial 5(CN-5). The permitted uses of your property include Resort Vehicle Park which means a parcel providing for seasonal or periodic accommodation only. This zone also permits 1(one) dwelling unit however the Regional District . . . doe not recognize the use of recreational vehicles as dwelling units. It will therefore be necessary for you to

ensure that the permanent occupancy/residency of recreational vehicles on your property ceases.

Should your cooperation not be forthcoming, the matter will be reported to the Board for further legal action as may be necessary."

The landlord testified that it also received a separate letter relating to structures on the property.

The tenant testified that she has spoken to the bylaw enforcement officer who told her anyone living in the park must have an address somewhere else.

On November 22 the landlord sent the tenant a letter that stated, in part:

"The results of their inspection are two letter.

1) There are a variety of structures alongside several of the recreational vehicle on the property.
2) The appearance that recreational vehicles on the property are being used for permanent occupancy/residency.

(Please see copies of the attached letters.)

[Landlord] must now take immediate action and enforce these bylaws."

On November 27 the landlord issued and served the tenant with a 1 Month Notice to End Tenancy for Cause. Although a number of reasons were listed on the notice in the hearing the landlord advised that it was only proceeding on two issues:

- Tenant has assigned or sublet the rental unit/site without the landlord's written consent; and,
- Rental unit must be vacated to comply with a government order;

with the second reason being the most important.

There was a previous hearing between these parties, file 769378. In the decision dated May 16, 2011, the arbitrator did find that the *Manufactured Home Park Tenancy Act* did apply to this rental arrangement. The landlord stated that in that hearing she was not prepared to address the issue of jurisdiction and did not present as much evidence as she submitted in this case.

Analysis

The *Manufactured Home Park Tenancy Act* only applies to rental arrangements that are tenancy agreements; not to those that are licences to occupy.

There are many different rental arrangements in this park so some arrangements may be licences to occupy while others may be tenancy agreements. It is necessary to examine the facts of each individual situation when determining whether the *Act* applies to it.

In making this determination I look to *Residential Tenancy Policy Guideline 9: Tenancy Agreements and Licence to Occupy.* Part of the direction contained in that guideline is that "The arbitrator will weigh all of the factors for and against finding that a tenancy exists, even where the written contract specifies a licence or tenancy agreement. It is also important to note that the passage of time alone will not change the nature of the agreement from licence to tenancy."

With regard to the decision in 769378 I note that the arbitrator's decision appears to hinge on the finding that "the pad has been rented to the tenant as the tenant's principle domicile since 2003". It does not appear that any other factor was presented to or considered by the arbitrator. Accordingly, I find the previous decision helpful but not determinative.

The factors weighing in favour of a licence to occupy are:

- The property is only zoned for seasonal or periodic accommodation.
- The tenant pays GST on the rent and always has.
- The tenant only pays for hydro; the landlord provides cable, wireless Internet, water and sewer.

The factors weighing in favour of a tenancy are:

- The tenant pays a monthly rent. Although the landlord testified that the rate is calculated on a daily basis of $13.33 per day the receipt filed for December 1, 2013 by the landlord shows a payment before hydro and GST of $363.30; which only equals payment for 27.25 days, not 31. In the hearing the landlord urged me to look at their web site and the rates posted there. I did. The website states that long-term RV site rentals are available and that the summer rate for these rentals is $575.00 per month plus hydro and GST; the winter rates are $400.00 per month plus hydro and GST. If the rate were being calculated daily, the amount due each month would vary depending on the number or days in the month. Neither the payments made by the tenant nor the rates quoted on the

website vary in this manner. Finally, earlier receipts for payment only show a monthly rate for the site rental.

- The trailer was the tenant's permanent home for over seven years.

After weighing these factors I find that this is a tenancy agreement and that I have jurisdiction to hear the tenant's application. In reaching this decision I have given particular weight to the fact that the rent has always been calculated on a monthly basis. The zoning is not a determinative factor because there can be tenancy agreements for seasonal residences, for example, a ski chalet rented for the ski season. The GST ruling is very clear that the findings made in that ruling are for GST purposes only so while I considered it, I did not find it determinative.

With regard to the validity of the notice to end tenancy I find that the letter from the municipal authority is not an order. It is a warning letter that the park must be brought into compliance with the zoning regulations but it does not order the landlord to do anything. Accordingly, I find that this ground for the notice to end tenancy is not founded.

Even if the letter was an order, the landlord's obligation is to ensure that there are no full-time residents in the park; not that their trailers be removed. The tenant is no longer a full-time resident of this park. If she, or a subsequent purchaser, uses this trailer as a part-time or vacation residence, the use of the trailer will comply with the zoning. Without hearing from the municipal authorities I am unable to determine whether the rental arrangement the tenant has with the person currently living in the trailer breaches or complies with the zoning bylaw.

With respect the sub-let agreement, the evidence is that the landlord did agree to this arrangement in advance. By doing so the landlord led the tenant to believe that written agreement would not be required in this instance. The landlord is now estopped from relying upon section 40(h) of the *Act* to end this tenancy.

In summary, I find that the landlord has not established grounds for ending this tenancy within the meaning of section 40 of the Act. The 1 Month Notice to End Tenancy for Cause date November 27, 2013, is set aside and is of no force or effect.

Conclusion

The 1 Month Notice to End Tenancy for Cause date November 27, 2013, is set aside and is of no force or effect.

As the tenant was successful on her application she is entitled to reimbursement of the $50.00 fee she paid to file it. Pursuant to 65(1) the tenant may deduct that amount from the next rent payment due to the landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 04, 2014

Residential Tenancy Branch