



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TLRG ENTERPRISES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the *MHPTA*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 40;
- an order requiring the landlord to comply with the *MHPTA*, regulation or tenancy agreement pursuant to section 55; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 65.

Both parties participated in the teleconference and were given a full opportunity to be heard. Both parties gave affirmed testimony and confirmed that they had exchanged their documentary evidence.

Preliminary Issue - Jurisdiction

The landlord brought up the issue of the jurisdiction at the outset of the hearing. The landlord testified that this park is split between manufactured homes and recreational vehicles. The landlord testified that she believes that the Branch does not have jurisdiction to hear the matter as the tenants rent a pad for which they park their "fifth wheel" on. The tenants testified that they believe the Branch does have jurisdiction as this is their permanent home and has been so for eight years.

I have turned my mind to Residential Tenancy Policy Guideline 9 and have considered the following:

The home is a permanent primary residence In Steeves v. Oak Bay Marina Ltd., 2008 BCSC 1371, the BC Supreme Court found: 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. 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. RV parks or campgrounds In *Steeves*, the Court set out 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 if it is occupied for “long, continuous periods.” See also: *D. & A. Investments Inc. v. Hawley*, 2008 BCSC 937. **As a result, if the home is a permanent primary residence then the MHPTA may apply even if the home is in an RV park or campground.** Factors that may suggest the MHPTA does not apply include: • 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;

RESIDENTIAL TENANCY POLICY GUIDELINE 9. Tenancy Agreements and Licences to Occupy May-20 This policy guideline is intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This policy guideline may be revised and new guidelines issued from time to time.

- 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. Other factors Other factors that may distinguish a tenancy agree

Both parties agree that the tenants have resided in the park for 8 years and that rent is paid on a monthly basis without any taxes. In addition, the parties agreed that this is the tenants' permanent home and has been so through the entirety of their time in the park

and that they have not moved the home out of the park during that time. Based on the above I find that the Branch does have jurisdiction, accordingly; the hearing proceeded and completed on that basis. This was explained in detail to both parties and both indicated they understood.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Should the landlord be compelled to follow an order to comply with the *MHPTA*, regulation or tenancy agreement?

Are the tenants entitled to the recovery of the filing fee for this application from the landlord?

Background and Evidence

The landlord gave the following testimony. The tenants moved into the park "about eight years ago". The current monthly rent is \$595.00 due on the first of each month. On July 6, 2020 the landlord issued a One Month Notice to End Tenancy for Cause for the following reasons"

Tenant is repeatedly late paying rent.

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*

Tenant has engaged in illegal activity that has, or is likely to:

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*

The landlord testified that there is a petition among other park residents that wish to see the tenants move. The landlord testified that they are not nice people and that BC steals things from other tenants. The landlord testified that the tenant spoke ill of her to her pastor and that the time has come for her to move. The landlord testified that the tenants engage in illegal activity and have threatened the quiet enjoyment of other tenants. The landlord testified that she and the tenants were friends at one time but that

relationship has broken down due to the manipulative and negative way BC treats people.

The tenants gave the following testimony. BC testified that she adamantly denies the illegal activity or theft allegations made by the landlord. BC testified that the police have not laid charges or even spoken to her about the alleged thefts. KC testified that most people that don't like them are related to the landlord and that the balance of tenants in the park get along well with him and his wife. BC testified that she just wants to be left alone and that they are happy living a quiet life. BC and KC testified that the landlord's allegations that they were infected with COVID-19 are false and that it is the landlord the speaks badly of people and not her.

Analysis

This was a very contentious hearing. The relationship between the parties is an acrimonious one. Each party accused the other of being a liar and were cautioned about their behaviour. When a landlord issues a notice under Section 40 of the *MHPTA* they bear the responsibility in providing sufficient evidence to support the issuance of that notice. Having reviewed the documentation before me and considered the testimony of the parties, I make the following findings.

Late Rent

The last time the tenants were late in paying the rent was 16 months ago. In the landlord's own testimony, she advised that since KC took over in paying the rent, "everything has been good". I find the matter of late rent to be quite dated and no longer an issue, accordingly; I find that the landlord has not provided sufficient evidence to show that the tenancy must end on that basis.

As for the remaining issues noted on the Notice to End Tenancy for Cause, I make the following findings. The landlord stated that she is unsure why the tenants wish to live in a park that no one wants them in, to which the tenants responded that they just want to be left alone. The landlord made numerous allegations of the tenants' behaviour including theft, to which the tenants adamantly denied. The landlord testified that they have several witnesses that can corroborate and confirm her version of the events, however; none of those witnesses participated in today's hearing. Based on the insufficient evidence before me on this date, I must dismiss the landlords request for an order of possession. The One Month Notice to End Tenancy for Cause dated July 6, 2020 is of no effect or force. The notice is cancelled.

The tenants were seeking a formal order to have the landlord comply with the MHPTA, regulation or tenancy agreement, however the tenants did not provide sufficient evidence to be granted such an order, accordingly; I dismiss this portion of their application.

As the tenants have been partially successful in their application, they are entitled to the recovery of the \$100.00 filing fee. The tenants are entitled to a one time rent reduction of \$100.00 from the next rent due in full satisfaction of their claim.

Conclusion

The One Month Notice to End Tenancy is cancelled, the tenancy continues.

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: August 24, 2020

Residential Tenancy Branch