



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, OLC, FFT**

Introduction

This hearing dealt with an application brought by the tenant on under the *Manufactured Home Park Tenancy Act* ("Act") for:

- An order to cancel a One Month Notice To End Tenancy for Cause pursuant to section 40;
- An order for the landlord to comply with the Act, Regulations and/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 the landlord and the tenant attended the hearing. The tenant was represented by a legal advocate, KC. As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Issue(s) to be Decided

Is there a tenancy agreement established under the *Manufactured Home Park Tenancy Act*?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all

details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant provided the following testimony. The tenant has lived on the property for approximately 3 years. The tenant pays \$400.00 each month for rent which includes utilities. This is her only residence, she does not temporarily reside there or use the site for vacation purposes. The tenant has no other residence that she would be able to return to if this tenancy was to be considered a temporary recreational visit. This is her permanent address.

There has never been a written Tenancy Agreement between the Landlord and the Tenant; the Landlord has never asked tenant to sign a tenancy agreement or a License to Occupy agreement. The tenant asserts that there is an unwritten tenancy agreement established under the *Manufactured Home Park Tenancy Act* governing the relationship between the landlord and the tenant.

She has been there longer than most of the other park occupants and when she moved in, she was told where she could park her camper-truck. She hooks into electricity via a 30 Amp outlet to the landlord's building and her water supply comes from a garden hose connection. Sewer is connected to an existing sewer line from an existing line from the 90's. The tenant testified she built a deck with the permission of the landlord for her own private use. The 'park' has never been rented to seasonal occupants and is not known as a temporary tourist park available for weekly, nightly or seasonal use. It was never advertised as such and the 'park' has no commercial identifier.

The tenant was served with an 'eviction notice' by the landlord due to the city's confirmation that the 'park' could not legally operate under the existing zoning regulations. The tenant submits that the 'eviction notice' doesn't comply with the *Manufactured Home Park Tenancy Act* because it's form and content are both incorrect.

The landlord gave the following testimony. There is no long-term tenancy agreement with the tenant in place. This rental agreement is not covered under the *Manufactured Home Park Tenancy Act* because the tenant does not occupy a manufactured home. She lives in a camper attached to her truck. It's mobile, on wheels and is classified as a recreational vehicle. Although people pay a fee to stay, they only stay on a temporary basis and leave when they are told to. The tenant is not hooked up to a permanent facility since she's connected to electricity by an RV cord, not connected to a 100 to 200 Amp box as a manufactured home is. Nothing is skirted, the camper is not on blocks.

The landlord retains access to the entire property at all times, as does his employee. The tenant does not enjoy the privacy of a manufactured home site where he is forbidden from entering without notice. The utilities are all paid by him; the tenant does not pay separately for water or hydro. The landlord collects a flat fee of \$400.00 per month for the use of the space. There was no security deposit taken and no collection of first and last month's rent.

The landlord issues very little receipts for the rent. He doesn't get to see the tenants very often. He served his "eviction notice" by posting it to the tenant's door, the same place he gives all notices to the tenant. The landlord acknowledges his "eviction notice" is drafted on a form under the *Manufactured Home Park Tenancy Act* because this rental agreement does not fall under that act.

Analysis

Tenancy agreements and Licences to Occupy are defined in the Residential Tenancy Branch Policy Guideline PG-9. Below, I emphasize portions of the guideline that apply to this case in **bold**.

Tenancy agreement

is defined in the Manufactured Home Park Tenancy Act (MHPTA), 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. It does not include a licence to occupy.

*Under the MHPTA, a manufactured home is defined as a structure, other than a float home, **whether or not ordinarily equipped with wheels**, that is*

- designed, constructed or manufactured to be moved from one place to another by being towed or carried, and*
- used or intended to be used as living accommodation.*

licence to occupy

a person is given permission to use a rental unit or site, but that permission may be revoked at any time. The Branch does not have the authority under the MHPTA to determine disputes regarding licences to occupy.

It is up to the party making an application under the MHPTA 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 rental unit or site.

Some factors that may help distinguish a tenancy agreement from a licence to occupy are discussed below. No single factor is determinative.

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;*
- *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.*

Based on the evidence before me, I am satisfied the tenant's permanent primary residence is located on the site noted in her Application for Dispute Resolution. She has been living at that location for a "long, continuous period" and no other location. The tenant is not temporarily staying at the location for a short-term vacation or for recreational purposes. She is charged rent of \$400.00 per month which indicates a monthly rate. No GST is paid on the rent.

Further, the tenant has constructed a deck at the site where her RV is located with the permission of the landlord. She has lived there year-round and there was no evidence presented by the landlord to show she ever moved the camper.

Although the landlord argues that the fact that the tenant's RV is mobile and on wheels, section 1 of the *Manufactured Home Park Tenancy Act* defines a manufactured home as 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**. It is clear to me that the tenant's camper is a manufactured home as defined by section 1 of the Act.

While the landlord argues that he pays for the utilities at the park and doesn't collect individual payments from the 'park' occupants, this in itself does not exclude the 'park' as a manufactured home park. It is not unusual for a manufactured home park operator to include utilities in the rent. As stated in PG-9, the payment of utilities is only one of the criteria that could potentially favour his position however all the circumstances surrounding the occupation of the site must be considered.

I have already found that the manufactured home is the tenant's permanent primary residence. The location where the tenant's manufactured home is located is, by default, a manufactured home site. Section 1 of 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. Based on foregoing, I am satisfied there exists an implied tenancy

agreement between the landlord and the tenant. This tenancy falls under the *Manufactured Home Park Tenancy Act*.

Section 45 of the Act states:

Form and content of notice to end tenancy

45 *In order to be effective, a notice to end a tenancy must be in writing and must*

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the manufactured home site,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 38 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form.*

The landlord acknowledges the 'eviction notice' he served upon the tenant was not prepared on the proper form. As such, I find the 'eviction notice' has no effect. The 'eviction notice' is cancelled and has no force or effect.

The tenant seeks an order that the landlord serve her with a notice in the appropriate form. I cannot compel a landlord to issue a notice to end tenancy and this portion of the tenant's application is dismissed.

The tenant's filing fee of \$100.00 will be recovered as the tenant was successful in her application. In accordance with the offsetting provisions of section 65, the tenant may deduct \$100.00 from a future rent payment.

Conclusion

The landlord's One Month Notice To End Tenancy for Cause is cancelled and of no further force or effect.

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 26, 2020