Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PIONEER INN and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, LRE, DRI, FFT

Introduction

The tenant applies for a compliance order that the landlord comply with the law or the tenancy agreement in some unspecified manner, an order restricting the landlord's right of access to the alleged manufactured home site, to dispute a rent increase and to recover her filing fee.

Both parties attended the hearing, the landlord represented by Mr. TL, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

The landlord disputes that the *Manufactured Home Park Tenancy Act* (the "*Act*") applies to the arrangement between the parties. If the *Act* does apply then the matter of landlord entry and rent increases will be governed by its terms. If the *Act* does not apply to the relationship between the parties then this arbitrator will have no jurisdiction to deal with any of the tenant's claims. The issue is therefore whether the *Act* applies.

Background and Evidence

The tenant is the owner of a trailer bearing all the indicia of a large travel trailer, though she indicates it is not a "recreational vehicle" (an "RV") because it has no holding tanks

and its original hitch has been removed. There is no dispute but that it is her primary residence. I will refer to it as her “home” for the purposes of this decision.

The landlord acquired the property about two years ago. The tenant has been living in the home at this particular location since 2002.

There is no written agreement. At hearing the parties agreed that the rent is a monthly amount of $450.00. The landlord provides electricity and water included in rent. It also provides wifi but the tenant uses her own connection. The tenant pays by cheque. No receipts are normally issued. When asked by this arbitrator the landlord indicated that GST is included in the rent though Mr. TL could not give a base rental figure without having to calculate it.

The property is composed of 25 sites the landlord describes as a RV park. It also operates a motel on the property.

The tenant says that when she moved onto the property a brown, wooden form of building was already there. She moved her home up against it and it forms a part of her living area. About ten years ago, before this landlord came onto the scene, she had a roof constructed over the home. Within the last year she has had constructed a small deck and stairs leading up to the brown building and thence to her home.

The tenant’s neighbour on the adjoining site has a very large travel trailer that is also covered with a roof and has a very large propane tank in front of it. The tenant says there are several “year round” tenants in the park; at least two for fifteen years. They are all pensioners like her.

Power and water are supplied to the site by underground connections emerging at a 4 x 4 wooden post. The tenant has installed a gas powered generator in an outbuilding and run an extension line to the power connection a the post.

Mr. TL says the property is a commercial property with an RV site. It is a “check-in, check-out” operation. He takes issue with what he considers to be the illegal attachment of the tenant’s brown building and her new stairs/deck construction, though the substantial roof he considers to be acceptable. He is having difficulty placing insurance for the property. He is also concerned that the tenant, with her new deck and stairs, is encroaching on a neighbouring site. It also appears that the tenant has run a second power line from the outlet intended to provide power to that neighbouring site.

Mr. TL confirms there is no map or description outlining the boundary of the site the tenant occupies. It is appropriate to note that use or abuse of electricity, removal of buildings or structures, encroachment or the determination of boundaries are not within the bounds of the tenant's application and so those issues will not be determined in this decision. The parties are free to pursue those matters after this hearing.

In response, the tenant disputes that there is any useable site abutting her's on that side. Rather she says it is a large rise in the ground.

Analysis

Residential Tenancy Policy Guideline 9, "Tenancy Agreements and Licences to Occupy" provides a detailed list of factors to be considered when determining whether a site rental such as this one is subject to the *Act* or is a true RV Park relationship where no right to exclusive possession of any area has been granted, merely a license to occupy a site, and to which the *Act* does not apply.

The Guideline, referring to the words in the *Act*, states:

> 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

I find that the structure in question falls within that broad description. It was obviously designed to be moved from place to place by being towed. It had a hitch and, indeed, the wheels are still on it. It is being used as living accommodation.

The Guideline goes on to note:

> 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.

The Guideline goes on:

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.

Other factors
Other factors that may distinguish a tenancy agreement from a licence to occupy include:

- payment of a security deposit;
- the parties have a family or personal relationship, and occupancy is given because of generosity rather than business considerations.

An arbitrator will weigh all the factors for and against finding that a tenancy exists.

(**emphasis added*)

In this case it is not clear that the water hookup to the home is “frost free.” I’m inclined to think not as there is exposed hose visible. There appear to be no other permanent housing facilities like power. There is, apparently, a sewer hook-up, but it may be a simple drain system used for short term connection of travel trailers and the like, not a year round hookup.

There is no doubt but that the tenant has added permanent features like a roof and skirting. As far as this landlord’s involvement is concerned, the tenant also has a significant habitable structure abutting the home. She lives in the home year round and it has not been moved for a very long time.

There is no argument but that the landlord has other sites in the park which are clearly used for short term RV travel or vacation sites. In this tenant’s case she is not charged by the day or week but pays rent monthly. I very much doubt that the landlord has ever considered adding (or including) GTS to the monthly rent. There is no evidence either way about an agreement between the parties on whether or not the tenant could simply vacate the site without notice. The tenant’s agreement has been in place for eighteen years; a very long time. The landlord pays the utilities and has recently hoped to increase rent because of what he considers to be the tenant’s overuse of the power supply. There are no apparent visiting hour restrictions though the landlord has referred the tenant to a set of rules that do not appear to be attached to any agreement she is a party to.

The tenant did not pay a security deposit and she is not there as a relative of the landlord.

Having regard to these factors and to the words of Mr. Justice Bracken in *Steeves*, above; that the *Act* is intended to apply to those 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, I find that the *Act* does apply to the rental of the site in question.

The tenant requests a compliance order is some unspecified regard. This decision is a direction to the landlord and to the tenant that they must comply with the terms of the *Act*.

As a result, the landlord is not entitled to enter upon the site except in compliance with s. 23 of the *Act*, nor is it entitled to increase rent except in accordance with Part 4 of the *Act*.

Conclusion

The tenant's application is allowed. She is entitled to recover the $100.00 filing fee for this application. I authorize her to reduce her next rent due by $100.00 in full satisfaction of the fee.

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: September 14, 2020

Residential Tenancy Branch