Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WILDWOOD CAMPGROUND
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, FFT

Introduction

Pursuant to section 51 of the Manufactured Home Park Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for emergency repairs, pursuant to section 27; and
- an authorization to recover the filing fee for this application, under section 65.

Tenant SA (the tenant) and the respondent attended the hearing. The respondent was represented by manager TL (the landlord). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 87(5) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00.”

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 82 of the Act.

Preliminary Issue – Jurisdiction

The landlord affirmed the Act does not apply to this tenancy, as the rental site is located in a recreational vehicle campsite.

Both parties agreed the tenancy started on September 01, 2022 and that the tenant is currently occupying the rental site. Monthly rent in the amount of $700.00 is due on the first day of the month and it includes water, sewer, electricity and internet access. The tenancy agreement is verbal.

The landlord stated that some sites in the recreational vehicle park only have water, sewer and electricity connections during the summer, but the tenant's site has permanent connections.

The tenant testified the tenancy is periodic and she plans to live on the site for years, as it is her only residence. The landlord said the tenancy is fixed term until May 01, 2023, as the site is rented for the summer for other tenants.

The tenant affirmed that other sites occupants' in the park have been living there continuously for more than ten years. The tenant stated that her manufactured home has a skirting and a wooden deck, and it cannot be driven.

Both parties agreed that the tenant does not pay GST, there are no restrictions to visiting hours and the landlord does not have the right to enter the tenant's site without written notice.

The Act defines tenancy agreement as "means 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 2(1) of the Act states: "Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, manufactured home sites and manufactured home parks."

Residential Tenancy Branch (RTB) Policy Guideline 9 states:

> 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.
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.

I accept the undisputed testimony that the tenant's site has permanent water, sewer and electricity connections, rent is paid monthly without GST, other sites occupants in the same park have been living continuously in the park for more than ten years, the tenant's manufactured home has a skirting and a wooden deck, the tenant plans to occupy the rental unit for a long time as her primary and permanent residence, there are no restriction to visiting hours and the landlord does not have the right to enter the tenant's site without written notice. The landlord did not collect a security deposit.

Considering the above, I find the parties have a tenancy agreement under the Act and the Act applies to the tenancy agreement.

Issues to be Decided

Is the tenant entitled to:

- an order requiring the landlord to carry out emergency repairs?
- an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the tenant's obligation to present the evidence to substantiate the application.

The tenant is seeking an order for emergency repairs to repair her water and sewer connections.

The tenant testified the water connection for her site stopped working one or one and half month ago and that she does not know what happened with the water connection. Later the tenant said the water connection stopped working around November 24, 2022. The tenant hooked up a hose to her neighbour's water connection and has been able to use water. The tenant verbally asked the landlord on November 20, 2022 to repair the water connection and the landlord informed her that the repair could not be completed during winter.

The landlord affirmed that the water connection froze because the tenant did not insulate it for winter. The landlord stated that she verbally instructed the tenant to insulate the water connection when the tenancy started and the water connection froze when the temperature reached -20c. The landlord testified that other sites have a functional water connection because the other occupants insulated their water connections properly.

The tenant said the landlord did not instruct her to insulate the water connection, but the tenant hired a plumber to do so in the fall, maybe on November 25, 2022, because she

is aware the water connection needs to be insulated. The tenant affirmed she spent over $1,000.00 to insulate the water connection. The landlord stated that the plumber did not insulate the water connection.

The landlord testified it is not possible to repair the water connection until the spring and that once winter ends the water connection will function properly, as it is not functioning now because it is frozen. The tenant said that it is possible to repair the water connection during winter.

The tenant affirmed that the sewer on her site is working, but the sewer outside her site is not working. The tenant stated that she can flush her toilet, but there is a bad smell in the park sewer as the sewer is leaking outside her rental site.

The landlord testified the sewer is not leaking, but the tenant's sewer pipe is leaking.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Section 26 of the Act states:

> (1)A landlord must
> (a)provide and maintain the manufactured home park in a reasonable state of repair, and
> (b)comply with housing, health and safety standards required by law.
> (2)A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the manufactured home site and in common areas.
> (3)A tenant must repair damage to the manufactured home site or common areas that is caused by the actions or neglect of the tenant or a person permitted in the manufactured home park by the tenant.

Section 27(1) of the Act states:

> In this section, "emergency repairs" means repairs that are
> (a)urgent,
> (b)necessary for the health or safety of anyone or for the preservation or use of property in the manufactured home park, and
> (c)made for the purpose of repairing

> (i)major leaks in pipes,
> (ii)damaged or blocked water or sewer pipes,
> (iii)the electrical systems, or
> (iv)in prescribed circumstances, the manufactured home site or the manufactured home park.

Residential Tenancy Branch (RTB) Policy Guideline 51 states:

> Under section 33 of the RTA and section 27 of the MHPTA, emergency repairs are defined as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of property, and made for the purpose of repairing:
> • major leaks in pipes,
> • major leaks in the roof (RTA only),
> • damaged or blocked water or sewer pipes,
> • damaged or blocked plumbing fixtures (RTA only),
> • the primary heating system (RTA only),
> • damaged or defective locks that give access to a rental unit (RTA only), or
> • the electrical systems.
> Emergency repairs do not include things like repairs to a clothes dryer that has stopped working, mold removal, or pest control.

I accept the tenant's testimony that she was aware that she needed to insulate her water connection before winter. I find the tenant's testimony regarding the water insulation was vague and confusing. The tenant did not provide details about how she insulated the water connection.

The landlord's testimony indicating the tenant's water connection is not working because the tenant did not properly insulate her water connection was convincing. Per section 26(3), a tenant must repair damages caused by the tenant's neglect.

Based on the landlord's convincing testimony, I find the landlord proved, on a balance of probabilities, her defence argument that the tenant's water connection is not working because the tenant did not properly insulate her water connection.

Thus, I dismiss the tenant's request for water connection emergency repair.

Based on the tenant's vague testimony, I find the tenant failed to prove, on a balance of probabilities, that the sewer connection needs an emergency repair. The tenant did not indicate there is an urgency for the sewer repair. The tenant may apply for an order for

regular repairs under section 26(1) of the Act regarding bad smell and sewer leaking outside the rental site.

Thus, I dismiss the tenant's request for sewer emergency repair.

The tenant must bear the cost of the filing fee, as the tenant was not successful.

Conclusion

I dismiss the tenant's application without leave to reapply.

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 22, 2022

Residential Tenancy Branch