IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Lang v. British Columbia (Residential Tenancy Arbitrator),*** 2008 BCSC 1707

Date: 20081031
Docket: 30991
Registry: Penticton

Re: *Judicial Review Procedure Act,* *Manufactured Home Park Tenancy Act*

Between:

Dolores Irene Lang, Tenant

Petitioner

And:

A. Lafleur in her Capacity as a Dispute Resolution Officer Under the Residential Tenancy Act and Illahie Beach RV Park Inc., Landlord

Respondents

Before: The Honourable Mr. Justice Brooke

Oral Reasons for Judgment

In Chambers
October 31, 2008

Appearing on her own behalf:	D. Lang
Appearing for the Respondents:	J. McAllister
Place of Hearing:	Penticton, B.C.

[1] **THE COURT:** The petitioner appeals under the ***Judicial Review Procedure Act*** the decision of a dispute resolution officer declining jurisdiction to hear the petitioner's application. This was an application for an order setting aside a notice to end tenancy given on July 25, 2008. The dispute resolution officer ("DRO") held that the ***Manufactured Home Park Tenancy Act*** did not apply, because the petitioner held nothing more than a licence to occupy. For the reasons which follow, the appeal is allowed.

[2] The facts are these. The respondent owns and operates a RV park and campground. Most of the 156 sites are for the use of those who holiday in trailers or recreational vehicles, where the stay is brief. The respondent's park closes during the winter months, apart from some 18 sites, one of which is occupied by the petitioner, and like the petitioner, who reside year round. The petitioner purchased the manufactured home in 2008 for $30,000, but the manufactured home had been in the respondent's park on site for some 10 years.

While the respondent closed the laundromat and washroom for the park in the winter months, the petitioner's manufactured home had self contained washroom and laundry facilities. In addition, it had a frost-free water supply provided by the respondent, propane heat, and was connected to a sewage disposal system. The petitioner pays monthly rent of $300 and is billed monthly by the respondent for hydro use. The manufactured home is the petitioner's only residence.

[3] On July 25, 2008, a notice to end tenancy was served on the petitioner. It is in the form prescribed by s. 47 of the ***Residential Tenancy Act*** and s. 40 of the ***Manufactured Home Park Tenancy Act***. The notice is purported to be given under s. 40 of the ***Manufactured Home Park Tenancy Act***.

[4] The reasons asserted for the notice by the respondent were that the tenant has allowed an unreasonable number of occupants in the site, and the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, and seriously jeopardized the health or safety or the lawful right of another occupant or the landlord, and has put the landlord's property at significant risk. The notice also alleges that the 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 or jeopardize a lawful right or interest of another occupant or the landlord.

[5] In response, the tenant applied under the ***Manufactured Home Park Tenancy Act*** for dispute resolution, seeking to cancel the notice to end tenancy. The dispute was heard September 12, 2008, and based upon the posted rules and regulations of the RV park, the DRO concluded that the petitioner held nothing more than a licence to occupy and that the ***Residential Tenancy Act*** had no jurisdiction. The DRO noted that many of the rules were inconsistent with a residential tenancy, namely the rule restricting the number of visitors and the rule requiring visitors to check in at the office, and the rule that specifies that the gate to the park will be locked at night. The DRO also observes that the occupant of a site is not obliged to give any notice if he or she intends to move. The DRO heard evidence that showers, washroom and laundry facilities were not provided during the winter months.

[6] On September the 25th, a review decision was given at the request of the petitioner on two grounds, firstly that a prior decision of a dispute resolution officer concerning the respondent's park found that the units were manufactured homes and subject to the ***Manufactured Home Park Tenancy Act*** and that there were different rules for monthly tenants like the petitioner than the rules for overnight campers. It was held that the new evidence was available at the time of the initial hearing and could have been adduced, and that the suggestion of fraud on the part of the respondents would not have led to a different result. In the result, the DRO found that the original decision was confirmed.

[7] Finally, the respondents then requested clarification and correction of the initial decision of September 12, 2008, which in its original form was expressed to be pursuant to s. 40 of the ***Residential Tenancy Act*** rather than the ***Manufactured Home Park Tenancy Act***. The decision was amended accordingly by the DRO on October 17, 2008.

[8] The decisions referred to in the review decision both concerned the respondent, Illahie Beach. The first, ***Sherbino & Illahie Beach RV Park Inc.*** was decided August 25, 2008. There, the respondent manufactured home park argued the tenants were vacation tenants and did not fall within the jurisdiction of the ***Manufactured Home Park Tenancy Act***, the very finding of the DRO in this matter, although later decided. The dispute resolution officer in ***Sherbino***, A.D. Katz referred to the definition of a manufactured home in the ***Manufactured Home Park Tenancy Act***, and s. 1 defines it in this way:

> “manufactured home” means a structure, 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.

The dispute resolution officer in ***Sherbino*** also referred to the definition of manufactured home park, which the Act says means this:

> “manufactured home park” means the parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located.

The definition of manufactured home site in s. 1 is this:

> "manufactured home site" means a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home.

[9] In the result, the dispute resolution officer in ***Sherbino*** found that the tenant's recreational vehicle is a manufactured home in a manufactured home park, on a manufactured home site. The dispute resolution officer noted that there is no definition of vacation home, nor is there any distinction made between a vacation home in a park or any other type of home. The dispute resolution officer specifically referred to s. 2, subsections (1) and (2), which say this:

> 2(1) Despite any other enactment but subject to section 4..., this Act applies to tenancy agreements, manufactured home sites and manufactured home parks.
>
> (2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

[10] The dispute resolution officer then referred to s. 4, which describes what the Act does not apply to. It says this:

> 4 This Act does not apply with respect to any of the following:
>
> (a) a tenancy agreement under which a manufactured home site and a manufactured home are both rented to the same tenant;
>
> (b) prescribed tenancy agreements, manufactured home sites or manufactured home parks.

[11] And finally, the prohibition against avoidance, which is found in s. 5, is referred to by the dispute resolution officer, and it says this:

> 5(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
>
> (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

In the result, the dispute resolution officer in ***Sherbino*** concluded the Act applies and that the respondent had failed to serve a notice to end tenancy in accordance with the Act.

[12] The second decision is that of ***Bookelaar***, Richard Adrian Bookelaar and Judy McAllister and Linda Snow. The decision was given on August 26, 2008. There, a notice to end tenancy was served on the basis of late payment of rent for March, April and June 2008, as well as a failure to pay utility payments as and when they fell due. There were also complaints of noise and aggressive conduct on the part of the tenant. The dispute resolution officer found a material breach of the tenancy agreement, and the application to set aside the notice was dismissed. There was no issue concerning whether the ***Manufactured Home Park Tenancy Act*** applied.

[13] In my opinion, the DRO on review asked the wrong question. The question that should have been asked was this: If the decisions in ***Sherbino*** and ***Bookelaar*** had been brought to the attention of the DRO, would the DRO have found jurisdiction? In my view, that would have been the case. If that is so, then the petitioner has not had a hearing of her dispute with the respondent and was denied the procedural protection afforded by the dispute resolution mechanism in the ***Manufactured Home Park Tenancy Act***.

[14] In her petition, the petitioner seeks an order setting aside the decision of the DRO of September 12, 2008, and remitting the matter back to a new dispute resolution officer to be decided under the ***Manufactured Home Park Tenancy Act***. As I understand it, the respondent does not oppose a rehearing of the matter, so long as the dispute resolution officer whose decision is appealed from hears the matter.

[15] The petitioner's claim is advanced under s. 51 of the ***Manufactured Home Park Tenancy Act***. Subsections (1) and (2) say this:

> 51(1) Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

(a) rights, obligations and prohibitions under this Act;

(b) rights and obligations under the terms of a tenancy agreement that

(i) are required or prohibited under this Act, or

(ii) relate to

(A) the tenant's use, occupation or maintenance of the manufactured home site, or

(B) the use of common areas or services or facilities.

(2) Except as provided in subsection (4), if the director receives an application under subsection (1), the director must determine the dispute unless

(a) the claim is for more than the monetary limit for claims under the *Small Claims Act*,

(b) the application was not made within the applicable period specified under this Act, or

(c) the dispute is linked substantially to a matter that is before the Supreme Court.

[16] For the sake of completeness, I will go on and read subsections (3) and (4). Subsection (3) says:

(3) Except as provided in subsection (4), a court does not have and must not exercise any jurisdiction in respect of a matter that must be submitted for determination by the director under this Act.

[17] Subsection (4) says:

(4) The Supreme Court may

(a) on application, hear a dispute referred to in subsection (2) (a) or (c), and

(b) on hearing the dispute, make any order that the director may make under this Act.

[18] Section 71.1 of the ***Manufactured Home Park Tenancy Act*** incorporates sections 56 to 58 of the ***Administrative Tribunals Act***, which is material to the issue before me. Section 58 of the ***Administrative Tribunals Act*** says:

58(1) If the tribunal's enabling Act contains a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.

(2) In a judicial review proceeding relating to expert tribunals under subsection (1)

(a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,

(b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and

(c) for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.

(3) For the purposes of subsection (2) (a), a discretionary decision is patently unreasonable if the discretion

(a) is exercised arbitrarily or in bad faith,

(b) is exercised for an improper purpose,

(c) is based entirely or predominantly on irrelevant factors, or

(d) fails to take statutory requirements into account.

[19] I refer as well to the recent decision of the Supreme Court of Canada in ***Dunsmuir v. New Brunswick***, 2008 SCC 9, where at paragraph 45 it is held that the two standards of unreasonable *simpliciter*, or patently unreasonable, should be reduced or collapsed to a single standard of reasonableness. The result is that in judicial review of administrative decisions there are two standards of review: reasonableness and correctness.

[20] I am satisfied that the decision to decline jurisdiction is neither reasonable nor correct, having regard to the purposes of the Act, the decided authorities, and the facts. Clearly, the recreational vehicle or manufactured home of the petitioner is a manufactured home within the meaning of the definition in the ***Manufactured Home Park Tenancy Act***. Equally clearly, the RV park is a manufactured home park within the meaning of the definition in the ***Manufactured Home Park Tenancy Act***. Section 2 says that the ***Manufactured Home Park Tenancy Act*** applies to tenancy agreements, manufactured home sites and manufactured home parks, and jurisdiction is not excluded by s. 4. I note as well that the DRO's finding that the petitioner has a licence to occupy was made under the ***Residential Tenancy Act***, where the definition of tenancy agreement includes a licence to occupy. No such provision is to be found in the definition of tenancy agreement in the ***Manufactured Home Park Tenancy Act*** or elsewhere in that statute.

[21] I also refer to the decision of Mr. Justice Bracken of the Supreme Court of British Columbia, in ***Steeves v. Oak Bay Marina Ltd.***, 2008 BCSC 1371. There, the issue that concerned the court was the distinction between permanent manufactured home sites and recreational vehicle sites, or permanent sites and recreational vehicle sites. At paragraph 112, Justice Bracken says this:

> The MHPTA is not intended to regulate seasonal campgrounds that are utilized not by large manufactured homes that require significant effort to move from place to place but by wheeled vehicles intended and used as temporary accommodation and licensed to [operate under] their own power or towed behind other vehicles...

In this case, the park gave notice that it intended to change the use of the park from one where tenants resided more or less permanently to a seasonal recreational vehicle park and campground. Justice Bracken held that this represented a change to a use other than a manufactured home park, and thus a notice was available under s. 42(1) of the ***Manufactured Home Park Tenancy Act***.

[22] In the result, I am satisfied that the petitioner must succeed. The matter will be remitted to the director to hear and determine the petition under the ***Manufactured Home Park Tenancy Act***. The matter is to be heard by a dispute resolution officer other than the dispute resolution officer who decided the matter initially.

[23] The petitioner, having succeeded, is entitled to her costs at Scale B, which I fix at $490, including disbursements.

[24] I am ordering a transcript of this decision, since it was longer and more extensive than I initially thought it would be, but I did consider it important to have the decision given to you earlier rather than after the reasons had been transcribed. Thank you.

Brooke J.