



Order under Section 9(2) Residential Tenancies Act, 2006

Citation: Neff v Wesley Acres Trailer Park Inc., 2024 ONLTB 14360

Date: 2024-02-23

File Number: LTB-T-084940-23

In the matter of: 1391 WESLEYACRES ROAD
BLOOMFIELD ON K0K1G0

Between: Joseph Neff Tenant

And

Wesley Acres Trailer Park Inc. Landlord

Joseph Neff (the 'Tenant') applied for an order to determine whether the *Residential Tenancies Act, 2006* (the 'Act') applies.

This application was heard by videoconference on January 17, 2024.

The Landlord's agents, Peter Robinson ('PR') and Tom Dehaan ('TD'), and the Tenant attended the hearing.

Determinations:

1. The Tenant said that the rental unit at issue is a leased site on which a four-season park model trailer that the Tenant owns is situated. He said the rental unit and the trailer are "set up" for year-round use.
2. The Tenant said he is retired and that the rental unit has been his permanent residence for the last 8 years. He said he has been assigned a post office box by the County, which is only done for permanent residents.
3. The Tenant said that he usually travels to South Carolina in the winter, but that he spent a winter during the COVID-19 pandemic at the rental unit during because of travel restrictions that were in place.

4. He said that he believes that the site is a rental unit in a mobile home park or land lease community for the purposes of the Act. He said that the park is open year-round, there is a water and sewer system, and there is no restriction on attending at any time of the year. He said the roads are cleared in the Winter, there is no barrier barring entry, and the Landlord does not do anything to restrict access. He said the park does not ever close.
5. The Tenant said the lease is yearly, but that he pays the rent due in 12 equal monthly payments.
6. The Tenant said that rent increases have always been compliant with the guideline amount imposed under the Act, and that when there was a rent freeze under the RTA in 2021, the rent was not increased.
7. The Tenant referred to a document he said was given to him by the Landlord entitled "Summary of Scheduled Rent Changes" (DOC2177655, p 21). In this document, the Landlord states: "... our legal advice indicates that the Residential Tenancies Act of Ontario (RTA) likely governs rent increases for your lot".
8. The Tenant also presented a schedule "A" from an application the Landlord previously made to the LTB regarding to park, seeking a determination as to whether the Act applies to various units in the park. He said the Landlord withdrew the application, but that the rental unit is one of the three sites described in the Landlord's application as:
 - seasonal lease (6 months, from May through October) with extension option which has historically been used. Extended seasons that has been used is November, December and April. January to March have historically not been used.
 - capable of being used annually
 - services provided year-round"
9. A copy of the original lease agreement was not submitted, but the Tenant did submit several agreements from subsequent years. For the year 2020, the document is entitled "2020 Annual Lot Lease Renewal – Metered". It then provides a fee schedule "for 2020 camping season". The camp operating season is defined as May to October 2020, but there is also an option to extend the lease to other months. The lessee is instructed to circle the months in addition to the camping season they will be at the rental unit, and the Tenant selected April, November, and December. HST is charged on the fees.
10. For 2021 the title of the document is "2021 Seasonal Lot Lease Renewal – Metered". In this document, it appears that the part indicating the renewal is for the camping season is struck out, and a prewritten statement indicating this is not the lessee's permanent residence is also struck out. HST is again charged on the fees. A separate extended lease

application is included, and this application only permits the extension for three months – April, November, and December. It is signed by the Tenant, but not the Landlord.

11. PR said the park is zoned for seasonal use, and the Tenant was always away in the Winter, except during the pandemic. He also said that the roads around the rental unit are cleared in the Winter because there is an area of the park that is zoned for year-round use, and the roads around the rental unit are cleared at the same time. It should be noted that the Tenant said he phoned the municipality and was told that there is no definition of “seasonal” in the by-law. Neither party presented a copy of the relevant by-law.
12. PR said the park is open year round, but that is because there is a section of the park for year round use, they also hold retreats, and there is a motel on site.
13. PR presented as evidence a copy of the Tenant’s 2014 lease renewal agreement. In this document the Tenant renews the lease for the camping season, identified as May 1 to October 31, 2024. He did not seek to “extend” the lease. In addition, the Tenant checked off a box indicating that he had read and agreed to comply with the Landlord’s policy and procedure manual. PR said this included a “Standard lot lease terms” document that he also entered as evidence (DOC-2558985). Clause 5 of the latter document states:

“Use of Leased Property – to use the Leased Property only for seasonal or temporary residential accommodations and activities incidental thereto, and not for permanent residence. In no event shall the Leased Property be used for any business activity without the prior written consent of the Lessor, which consent can be unreasonably withheld”.

14. PR said that the Tenant signed a similar document each year until 2019 with no major changes, and then he stopped signing. He said the Tenant did sign again in 2021. PR said that year, in response to the Tenant’s request, the Landlord made an exception to allow the Tenant to stay in the park from January to March because of the pandemic. He presented a letter dated September 24, 2021 which permits the Tenant to stay at the rental unit from January to March 2022, but it was made clear that this is an exception, and not the rule (DOC-2559147)
15. PR said that the Tenant is not supposed to be staying in the park from January to March of any year..
16. PR said services are left on year-round for practical reasons. He said the maintenance of water pressure protects the system.

Law & Analysis

17. The Act applies to rental units in residential complexes: ss. 3(1), *Residential Tenancies Act, 2006*. I find that the site at issue falls within the definition of a “rental unit”. This definition

specifically includes “a site for a mobile home or site on which there is a land lease home used or intended for use as rented residential premises”: ss. 2(1), *Residential Tenancies Act, 2006*.

18. This is a site for a mobile home, and it is used and intended for use as rented residential premises. A residential complex includes a mobile home park or land lease community, and “a site that is a rental unit”: ss. 2(1), *Residential Tenancies Act, 2006*.
19. The Act therefore applies unless the rental unit is exempt from the Act. The Landlord’s position is that the rental unit is exempt by clause 5(a) of the Act, which states that the Act does not apply to:

“living accommodation intended to be provided to the travelling or vacationing public or occupied for a seasonal or temporary period in a hotel, motel or motor hotel, resort, lodge, tourist camp, cottage or cabin establishment, inn, campground, trailer park, tourist home, bed and breakfast vacation establishment or vacation home”
20. The question that must be determined is whether this is living accommodation provided for a seasonal period in a campground or trailer park. I accept that this is “living accommodation”. The next questions are whether it is intended to be provided for a “seasonal” period, and whether it falls within one of the categories of accommodation contemplated by clause 5(a): *Matthews v. Algoma Timberlakes Corporation*, 2010 ONCA 468 (CanLII), paras 33-35.
21. In determining that a tenancy agreement to which the Act applies cannot restrict access to a rental unit on a seasonal basis, the Court of Appeal in *White v. Upper Thames River Conservation Authority* stated “... rather than address seasonal or temporary accommodation arrangements in the context of leases covered by the Act, the Legislature exempted them all together”: 2022 ONCA 146 (CanLII), paras 23-24.
22. On the evidence before me, I am satisfied that this living accommodation is intended for seasonal use. In particular, it is intended for use between April and December each year, and not January to March. The lack of a physical barrier does not change this intention, nor does the fact that roads are cleared to provide access to an area of the park that is open year-round.
23. The earliest lease renewal documents before me, from 2014, confirm this and the renewal documents from later years remained substantially the same. I also note that when the Landlord made an exception due to the extraordinary circumstances of the COVID-19 pandemic, it was in response to the Tenant’s request for an exception. I infer from the fact that the Tenant made this request that he knew he was not permitted to stay in the park from January to March in the normal course. Prior to this exception being granted, it was the Tenant’s practice not to stay at the rental unit during the months of January to March.

24. I also accept that this living accommodation is in a trailer park. The rental unit therefore falls within the exemption provided by clause 5(a) of the Act.

25. Based on the evidence before me, I am satisfied on a balance of probabilities that the Act does not apply to the rental unit.

It is ordered that:

1. The Act does not apply.

February 23, 2024

Date Issued

Mark Melchers

Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.