

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

File Number: SWT-65538-14

In the matter of: LOT 339 IRONWOOD, 75559 LIDDERDALE
STREET
BLUEWATER ON NOM1GO

Between: John Saraiva Tenants
Maria Saraiva

and

Paul Bunyan Trailer Camp Limited Landlord

John Saraiva and Maria Saraiva (the 'Tenants') applied for an order to determine whether the *Residential Tenancies Act, 2006* (the 'Act') applies.

This application was heard in Goderich on December 12, 2014.

The Tenants, Mr. S Harvey, the Tenant's Legal Representative and Mr. J. Boere, and officer of the Landlord company and Ms. K. Ley, the Landlord's Legal Representative Paul Bunyan Trailer Camp Limited (the 'Landlord') attended the hearing.

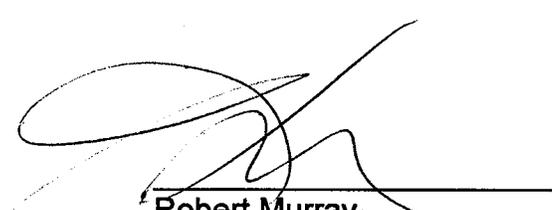
For reasons attached:

1. I find that the Act does not apply.

It is ordered that:

1. The application is dismissed.

February 9, 2015
Date Issued



Robert Murray
Member, Landlord and Tenant Board

South West-RO
150 Dufferin Avenue, Suite 400, 4th Floor
London ON N6A5N6

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

REASONS

1. This application concerns an agreement regarding the use of land and other facilities at a trailer park. The landowner enters into two or three different types of agreements with those who wish to occupy land on its property.
2. One agreement covers those persons who wish to remain in the park throughout the whole of the year. There are a limited number of these agreements in the complex. The second type of agreement allows for seasonal use on the land, while the third type covers very short term use (weekends, a couple of weeks in the season etc.).
3. The agreement at issue here is of the second type; called a "Seasonal Licence of Occupation 2014" (see page 37 of the Respondent's Document Brief). The applicant submits that in essence this is a lease and that the relationship between the parties is that of landlord and tenant. The Board disagrees for the reasons that follow.
4. Two sections of the *Residential Tenancies Act* (the "Act") are particularly relevant to this application. Section 5 of the Act sets out exemptions from the Act; in other words the Act does not apply to these exemptions.. Section 5.(a) exempts living accommodations intended to be occupied for a seasonal or temporary period, including those in a trailer park
5. Section 202.(1) of the Act directs the Board to ascertain the real substance of all transactions and activities related to a rental unit or in this case when determining whether the agreement creates a landlord and tenant relationship over which the Board may exercise its jurisdiction. In so doing the Board looks first to the written agreement between the parties
6. This agreement, between "Owner and Occupant," which is similar to all the preceding annual agreements spanning some 18 years, sets out in its first section that the license is for seasonal occupation of the licensed site only. In the same section the season is defined as April 25 to October 15 of the calendar year.
7. In addition, the invoice for the fee for the licence (page 39 of the Respondent's Document Brief) gives the occupants three options. The first two are a single payment for the annual fee (one option is discounted for early payment) and the third gives the occupant the right to pay the fee in six monthly instalments over the season as defined in the licence. There is a separate invoice sent for storage of the trailer after the season until the commencement of the next year if the occupant wishes to renew the agreement. For example the storage fee for the off-season was a flat fee of \$200.00 in 2013.
8. It should be noted, that there is no supply of water to the trailer in the off-season; that at the completion of the season as set out in the agreement, the water supply to the trailer is cut off, the pipes are blown clear until for following commencement of the season, assuming that the licensee wishes to renew. The water connection to the unit is not

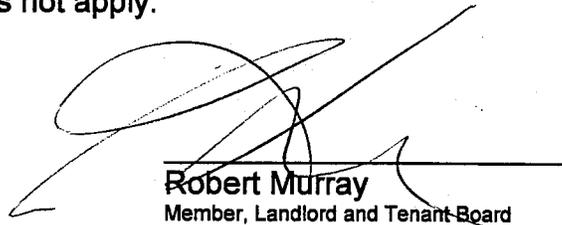
designed nor intended for use in the winter months; the piping is not buried beneath the frost line nor is the connection winterized.

9. Access to the applicant's unit in winter by plowed road is partially and only serendipitously available as the plow to clear the road for the permanent resident units in the complex has to pass part of the road in front of one side of the applicant's trailer. The owner of the land does not provide this service to seasonal licensees.
10. The applicant argues that notwithstanding the clear language with respect to the seasonal nature of the license, the relationship is that of landlord and tenant for a number of reasons. The first is that the agreements each of a year in duration have been in place for some 18 years and this fact along with others is indicative of a landlord and tenant relationship. The argument seems to suggest that the licensee can claim some sort of equitable remedy akin to the concept of adverse possession. As the husband now wishes to retire, the applicants seek to avail themselves of what they see as this prescriptive remedy, move to the trailer and live there all year-round as tenants of the landowner.
11. The Board rejects this assertion as having no basis in law. Because the occupants unilaterally wish to alter a one year seasonal agreement and live there on a year-round basis, confers no right to do so regardless of the number of seasonal licenses that have been executed between the parties.
12. The occupants assert that because they have added to the exterior of the trailer, that they have enhanced it through the addition of a deck(s) and fire pit with the permission of the owner, this is indicative that the trailer is a full time residence and not a seasonal one. The Board disagrees.
13. The enhancements accrued to the value of the trailer, owned by the applicants and not the owner of the land and while it may be true that if the applicants decided to pull up stakes and remove the trailer, it would be logistically impossible to recoup the value of the deck and so on, that is a decision made by the owners of the trailer when they decided to do the work and not the owner of the land. In addition enhancement of the trailer is not germane to the issue of the seasonal nature of the agreement.
14. It strikes the Board that this argument with respect to the enhancement of the trailer is analogous to that of a gardener who decides to tether an annual bloom to an ornamental stake to enhance its appearance and then argues that the bloom has thus become a perennial.
15. The applicants argue that the trailer is of an age that removal from the site is not a viable option; that the trailer would fall apart. While this may be so, again the decision to leave the unit at the site while it ages to the point at which removal becomes questionable is not a decision made by the land owner, but by the applicants and has no bearing on the nature of the agreement with the owner of the land.
16. This is not to suggest that the applicants are without a financial remedy; that is they may wish to sell the aged, decked, fire-pitted unit to someone who wishes to use it in

accordance with a seasonal licensing agreement. However, this is not determinative of the issue before the Board.

17. The final argument of substance put forward by the applicants is that *Mathews v. Algoma Timberlakes Corp.*, 2010 ONCA, 468 determined the issue with respect to these "seasonal use" contractual relationships in finding that they are in essence that of landlord and tenant. The Board disagrees.
18. While that Algoma case so found, the facts that gave rise to that decision bear little resemblance to those in this matter and thus the Algoma case is clearly distinguishable.
19. For example in the Algoma case, the contractual agreements were "leases" covering an initial 20 year less one day period for the land on which the lessees erected cottages which were designed for and used as year-round, second homes. Moreover, the land owner arbitrarily sought to alter the lease agreements to licenses. Rent was payable under the leases on a year-round basis and access to the units was provided by the landowner on a year-round basis.
20. None of these factors apply to the case before the Board; the licences are annual, and not only refer to but define their seasonal nature. The fee for the use of the land is payable over the season only as defined in the agreement. A separate storage fee is assessed if the licensee wishes to store his or her unit on the land in the off season.
21. The landowner provides no access to the seasonal licensee in the off-season and no water supply available to the licensee in the off season.
22. In light of all of the evidence before me, I find that the applicant's unit is intended to be occupied for a seasonal or temporary period, and as a result, exempted under section 5(a) of the Act. The Act therefore does not apply.

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