1. Rent increases

Rent increases under the RTA are relatively simple. Most of you should be familiar with the RTA's Notice of Rent Increase for Residential Rental Units, also known as a 'RTB-7'form. The formular for the maximum allowable rent increase for 2021 is pretty straight-forward, it is 1.4%. The parallel form for MH sites is the Notice of Standard Rent Increase for a Manufactured Home Site, also known as a 'RTB-45 form'. Observe, that form uses the word 'site' not 'Park' – why is that? – well, without getting into jurisdiction issues just yet, the Tenant can live on a Residential property, in a manufactured home, so long as they own it, and be covered under the MHPTA. The MH site form basically mirrors the Residential Rental Unit form. The key is – this form is the 'standard-calculation' form.

Landlords who rent MH sites, also have the option of using what I will refer to as the 'complex-calculation' form. Officially, it is called the Notice of Rent Increase for a Manufactured Home Site, also known as a RTB-11a form. To oversimplify things, for 2021, it would be the 1.4% inflation rate plus the proportionate increase in local government levies and utility fees for common property. It involves a detailed calculation and thus why the form is 4 pages long, and has 2 pages of Landlord's instructions to go along with it. If you wish to read further on the matter I will refer you to Sections 32 and 33 of MHPT Regulation, and Residential Tenancy Policy Guideline 37. on Rent Increases. Please also note that the Landlord must provide access to a complete set of tax notices and local government levy invoices, public utility bills and assessment notices. These may be posted in a common area for all tenants, but the landlord must provide a tenant with copies upon request. These notices, as any rent increase notice, can be challenged before the RTB. Due to the complex nature of these forms, it can be relatively easy for the Landlord to 'slip-in' some extra monies for themselves – I have caught Landlords more than once, trying to do so.

Where things get even more complicated is the 'complex-calculation' form states, "This notice is *not* used where a tenant rents a manufactured home and the site under a single tenancy agreement." That is because if the Tenant rents both the home and the site, the tenancy falls under the RTA. …Now, if the Tenant rents only the Manufactured Home itself, the rent increase would be done under the RTA, not the MHPTA. However, the Home Owner's agreement with the Landlord, for the site, would still fall under the MHPTA. …So, in other words, the Home Owner would be permitted to pass on the 1.4% inflation to the Tenant, but not the proportionate increase in local government levies and utilities fees for common property, to the Tenant.

2. Park Rules and Tenancy Agreements/material terms

The MHPTA under Section 32 states – now, I've edited this a bit, for simplicity's sake – "The landlord may establish, change or repeal rules for governing the operation of the manufactured home park. These rules must not be inconsistent with this Act or the regulations or any other enactment that applies to a manufactured home park. If a park rule established under this section is inconsistent or conflicts with a term in a tenancy agreement that was entered into before the rule was established, the park rule prevails to the extent of the inconsistency or conflict."

Sometimes, in 'problematic' Parks, Landlords either explicitly or functionally, make their Park Rules out to be an extension of a Tenant's tenancy agreement, and will often try to unilaterally change the terms that agreement, whether it is a written or an oral agreement. Obviously, this is conflict with Section 32 of the MHPTA, but that is not always apparent to the Tenant. Furthermore, Section 5 of the MHPTA clearly states, "This Act cannot be avoided. (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." However, that doesn't necessarily stop Landlords from trying to opt out of the Act. Sometimes, in these situations, the Landlord will even go so far to make all of their Park Rules out be 'material terms'.

So, what is 'material term'? …According to Residential Tenancy Policy Guideline 8. Unconscionable and Material Terms, "A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement." Note, that <u>both parties must agree to the term</u>. That term cannot be unilaterally forced upon the Tenant, and certainly not under the guise of a Park Rule.

Let us look at an example, here. I was very recently, involved in a case with our friend, Matthew Granlund, who argued the case before the RTB. It got a fair bit of publicity on CBC for what you will quickly see are pretty obvious reasons. It would almost be comical if it wasn't so Kafkaesque. The three park rules that were contested, read as follows: "1. Not abiding by all rules & regulations (will be fined without warning/notice) and will increase significantly after each fine). ($1000 & up) 2. Any resident(s) found/proven slandering on social media or anywhere else (will result in termination of tenancy effective immediately). 3. Yards that are not properly maintained will be fined $1000.00+ and will be cleaned up/mowed by our contractors without any warning or notices (all costs associated will be forwarded to that resident/tenant)." …Yeah…really.

How was this actually dealt with? …We asked the RTB for an Order to Comply with section 30 of the Regulation, and the Tenants received that order. Section 30 (3) of the Regulation reads in part, "A rule established, or the effect of a change or repeal of a rule changed or repealed, pursuant to subsection (1) is enforceable against a tenant only if (a)the rule applies to all tenants in a fair manner, (b)the rule is clear enough that a reasonable tenant can understand how to comply with the rule, …and (d)the rule does not change a material term of the tenancy agreement."

The Arbitrator in his decision, penned, "I find on the balance of probabilities that the tenants have met the onus of proving their claim for an order under section 55 of the Act [which states –

"The director [the arbitrator] may make any order necessary to give effect to the rights, obligations and prohibitions under the Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement."]. Therefore, I order that the Landlord must comply with Act and the Regulation in any future establishment, change, or repeal of a park rule. Finally, I find that the three disputed proposed rules are not, and would not be in compliance with the Act and the Regulation, and, that any variation of such rules would be null and void. Certainly, while the landlord has every legitimate operational and business reason to maintain a well-run park. Implementing draconian and unreasonable rules is not the best method for doing so." …I do like the Arbitrator's use of the word, 'draconian', here.

3. Park Committees / Park Homeowner Associations

According to section 31 of the MHPTA, "the landlord and tenants of a manufactured home park may establish and select the members of a park committee." The purpose of a park committee, more or less, to use the language of MHPT Regulation 23(1), "is to establish, change or repeal a [Park] rule". Also, note, that an extensive portion of the Regulation, Sections 13-28, are devoted to the topic of park committees.

Here is the thing – Park Committees can work great when things are going good in the Park. But they only will ever be formed if things indeed, are going good in the Park. That is because it is very unlikely that the Landlord will join a Park Committee if there is tension in the Park. Section 17 of the Regulation states, "A park committee must consist of (a)the landlord of the park or an individual nominated by the landlord, and (b)not fewer than 2 and not more than 5 tenants who ordinarily reside in the park." Observe that the Landlord cannot be compelled to join the Park committee. This also allows the Landlord to establish park rules, as they see fit. Section 32(1) of the MHPTA makes this clear, when it reads, "if there is no park committee, the landlord may establish, change or repeal rules for governing the operation of the manufactured home park." So while park committees may serve a purpose, to a degree, they can also be rendered functionally useless.

So, what is the solution? … Well, the best solution is to form a 'Park Homeowners Association'. A Park Homeowners Association can be as formal or less formal as the Tenants of a MHP want it to be. Also, note that is has no authority whatsoever, under the Act or the Regulation. It is really just meant to be a way of organizing folks. There is a further strength in numbers, as well.

I am quite indebted to Joyce Klein, the former Director of Active Manufactured Home Owners Association (AMHOA), for this part of the presentation. Joyce is the most knowledgeable person in the province on MHP matters. She is also the reason we have a lot of the laws in place that we do, under the MHPTA. Unfortunately, she is mostly retired these days. Many of the things that I learned about MHP laws were through her, and I will also be grateful for our friendship.

This is how Joyce described a Park Association, in part, "A Park Homeowner Association has many benefits and advantages in that it provides: a) An open forum at meetings where Homeowners can discuss, without the presence of the landlord, items of concern from both inside and outside the Park that may affect Homeowners. b) A means through which Homeowners can receive assistance, guidance, information and representation in the dispute resolution process. c) The opportunity to establish a harmonious atmosphere in the Park. d) The option of organizing social functions. e) The ability to represent Homeowners opinions on Municipal or Regional matters. f) Can work with the Landlord to resolve items of concern in the Park by inviting the Landlord to participate in meetings of the Executive Council when items are on the agenda that require the assistance of the Landlord for successful resolution. And g) I would add – Can serve as a bridge between the Tenants of the Park and the local/regional Advocate – that is you folks.

In order to form a Park Homeowner Association, a few homeowners in a Park need to take the initiative by first organizing an information meeting. There is no need to have the park owner or manager present at the formation. You folks as the local/regional Advocate, can help facilitate this. Feel free to contact me if you would like more information about this process.

4. Assignments

I would argue that Assignments in MHPs are the most complicated subject under the MHPTA. This can be for a number reasons, including: a) the Landlord has made it complicated by mixing the matter in with their Park Rules and/or a Tenancy Agreement, b) the Landlord wants to significantly raise the pad-rent, c) the Landlord wants significant upgrades to the home before they will permit a sale, d) the Landlord wants the buyer to apply for a new Tenancy so they can functionally interfere with / or prevent the sale for any reason they choose, and e) under rare circumstances, they will make the new Tenancy Agreement so onerous it will frustrate the new Owner so much so, they will eventually walk away from their own home, and be forced to sell it to the Landlord for as song. …Although having said that, I can also see, in part, why Landlords might want the new homeowner to sign a new Tenancy Agreement, especially if the home is run down – the problem I see though is that the Landlord will often take this too far.

Shortly, I will discuss an Arbitration where the Landlord tried to do all 5 of these things. But first, let us then look at certain parts of the Act, Regulations, and Policy.

Policy Guideline 19. Assign and Sublet states, "Assignment is the act of permanently transferring a tenant's right under a tenancy agreement to a third party, who becomes the new tenant of the original landlord. When either a manufactured home park tenancy or a residential tenancy is assigned, the new tenant takes on the obligations of the original tenancy agreement".

MHPTA Section 28 Assignment and subletting
(1)A tenant may assign a tenancy agreement or sublet a manufactured home site only if one of the following applies: (a)the tenant has obtained the prior written consent of the landlord to the assignment or sublease, or is deemed to have obtained that consent, in accordance with the regulations; (b)the tenant has obtained an order of the director authorizing the assignment or sublease; (c)the tenancy agreement authorizes the assignment or sublease.

(2)A landlord may withhold consent to assign a tenancy agreement or sublet a tenant's interest in a manufactured home site only in the circumstances prescribed in the regulations.

Everything is pretty much spelled out in the MHPT Regulations 42 through to 52.

42 Definitions
"assign" means to assign a home owner's tenancy agreement to a purchaser under section 28 (1) of the Act [assignment and subletting];

43 Providing tenancy agreement and rules
Before requesting the landlord's consent to an assignment or a sublease, a home owner must provide a copy of (a)any part of the tenancy agreement that is in writing, and any rules in writing and applicable to the tenancy agreement, to a proposed purchaser. – Already you should be able to see here, how 'crazy' Park Rules might affect a potential sale

44 Written request for consent to assign or sublet(1)Sections 45 [response within 10 days] and 46 [deemed consent] apply to a home owner's request for consent to assign or sublet only if the home owner requests the consent of the landlord of the park to assign or sublet in writing in the

form approved by the director. – That form to assign is a Request for Consent to Assign a Manufactured Home Site Tenancy Agreement, also known as a RTB-10 form. **Please take note: most MHP homeowners have never heard of these forms, and a Landlord will very rarely tell their Tenants about these forms. You really need to be aware of this form if a homeowner is try trying to sell their home in a MHP.** Also, if the Tenancy Agreement prevents subletting the Tenant cannot sublet, however, the Tenant can always assign according to the Regulations, even though the Landlord might try to prevent them through their Tenancy Agreement or Park Rules. This can be challenged before the RTB.

(3)The written request under subsection (1) must be signed by the home owner and must provide all of the …information – Just make sure the form is filled out completely.

4. Response within 10 days
(1)The landlord of the park must provide the home owner with a written response to a request under section 44 [written request] – This is page 5 of 6 of the form.

(2)If a landlord withholds his or her consent for the home owner to assign or sublet, the landlord's response must indicate (a)the grounds under section 48 [grounds for withholding consent] on which he or she is withholding consent, and (b)the source and nature of the information that supports those grounds.

46 Deemed consent if no response within 10 days
(1)The landlord's consent to a request under section 44 [written request for consent] is conclusively deemed to have been given and the home owner may assign or sublet to the proposed purchaser or subtenant identified in the written request if the home owner has not received the landlord's response (a)by the end of the 10th day after the day the landlord received the home owner's request.

(2)The home owner is entitled to consider that consent is deemed to have been given under paragraph (1) (a) if he or she can demonstrate that the request on the landlord was served in accordance with section 81 of the Act [service of documents].

48. Grounds for withholding consent to a request
For the purposes of section 28 (2) of the Act [landlord's consent], the landlord of the park may withhold consent to assign or sublet only for one or more …reasons. – Simply said, just get to know these reasons.

Assigns and subtenants
52 An assign or subtenant must comply with the rules that are in effect at the time of, or after, entering into the assignment or sublease.

Okay, there is law in a nutshell. But here is the problem – which I am hoping will soon be fixed – if a Landlord unreasonable 'blocks' a sale – it can take 6 to 8 weeks to come before the RTB, and the buyer is often gone by then or doesn't want to move into the Park by then. …I once dealt with a Park Owner who functionally blocked over 30 sales. She actually used to kick the real estate agent off of the Park property. …Fortunately, the RTB's Investigation Unit is now, in full swing, now.

Anyway, here is part of the Arbitration that I was referring to earlier (it too, is rather Kafkaesque):

The new park rule #11 stipulates:

> "Before listing a home for sale the owner of the home to be sold must notify the Landlord. The Tenant must provide the Landlord with a full inspection report of the manufactured home including but not limited to electrical, roofing, heating plumbing including heat type, leaking windows, all health and safety issues such as mold in or on the walls or ceiling, the wiring, fire rating and safety of any wall panelling, environmental damage from leaking vehicles or an oil tanks, and all other deficiencies. These must be repaired prior to the sale of the home. The Home must comply with all current building and electrical codes and the roof must be in good shape. There must be a fire extinguisher, smoke detector, carbon monoxide detector. Wood heaters are to be removed and replaced with a furnace or more environmentally friendly source of heat. The manufactured home must have vinyl siding and vinyl skirting in good shape with no rust, algae or moss. The color of the trailer must comply with the list of approved colors. The yard must be well kept and any damage to the grass due to cars or any other causes must be repaired. Any contaminated soil from leaking vehicles is to be removed and the site repaired. Oil tanks must be removed and any environmental damage from the tank and accessories is to be repaired and contaminated soil removed. Any alterations to the lot such as widening driveways or putting gravel where there should be grass are to be returned to grass at the owner's expense. Any unsightly fences or fences that do not comply with the height restrictions are to be removed. All fences that comply are to be pointed and all sheds are to have siding to match the trailer. Any oversized trees are to be removed.
>
> Once the manufactured home and the site is cleaned and repaired and the Tenant provides proof that all deficiencies in the inspection report were repaired and the outside of the trailer and grounds are in excellent condition. The tenant will be provided with the information needed to proceed with the sale (ie. Application for Tenancy, Park Rules, Electrical code, Authourization for a credit and criminal check, Instruction to Realtors) A for sale sing may be placed in the window of the home. All tenants must provide 30 days written Notice of their intention to vacate the park. All outstanding rent and any late fees must be paid in full.
>
> The Tenant and the Purchaser must provide proof of transfer of title otherwise there is no tenancy and the Home will have to be removed from the park."

As to the issue of the park rule #11 I find the park rule is unenforceable for the following reasons:

1. Section 32 of the *Act* allows the landlord to establish rules that govern the operation of the manufactured home park, it does not allow the landlord to make rules regarding the possessions of the tenant including the interior of the homes such as whether or not they have leaky windows; have smoke detectors; fire extinguishers; or carbon monoxide detectors;
2. While Section 30 of the Regulation allows the landlord to establish park rules they must, among other things, not change a material term of the tenancy agreement. As the park rule imposes on the tenant many restrictions as to the condition of the manufactured home that cannot be a term of a tenancy agreement, let alone a material term, such as no leaky windows I find the landlord is attempting to impose conditions that are not imposed anywhere else and in fact cannot ever be terms of a tenancy agreement;
3. While Section 48 of the Regulation allows a landlord to withhold consent of assigning a tenancy if the manufactured home does not comply with housing, health, and safety standards required by law it does not allow the landlord to withhold consent to assign if there is a wood heater or leaky windows unless specifically prohibited by local bylaws; and
4. Finally, I find that the terms in this particular park rule are unclear and so overreaching that it is application to all tenancies may never allow any person to sell their manufactured home at any time.

5. MHP Closures

Prior to June 6, 2018, if a MHP closed the Tenants were only entitled to the equivalent of 12 months of pad rent – which was basically nothing for their home, especially if they were unable to move it.

A number of years ago Housing Minister, Rich Coleman – who was Housing Minister for a whopping 12 years – got rid of the $10 000 compensation for MHP Tenants if a Park closed. This was apparently, to save them the 'trouble' of going after the Landlord for the $10 000 after the fact. So, he thought it was a better idea just give them 12 months pad rent. The problem was some folks never even got that 12 months pad rent. There were over 35+, 12 month Notices issued at Stonecliff Properties in Port Edward – and only 1 Tenant out of the whole lot ever got a dime from the Owner. Also, back then, a tenant who was unable to relocate their manufactured home when a park was closed, was responsible for disposal costs. Not only did the Owner of Stonecliff Properties not give the Tenants their 12 months pad rent, she then, tried to sue them all for $250 000+. Fortunately, a number of Arbitrators realized you might need that 12 months compensation in order to move your home (which wouldn't even cover the expense).

Our new government realized that proper compensation for tenants MHPs facing eviction, was a priority. Simply said, compensation for tenants is now $20 000+, under the new Regulations, and Policy Guideline 33.

Let us then look at the relative parts of the Act and Regulations.

Landlord's notice: landlord's use of property
Section 42 of the MHPTA (1)Subject to section 44 [tenant's compensation: section 42 notice], a landlord may end a tenancy agreement by giving notice to end the tenancy agreement if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert all or a significant part of the manufactured home park to a non-residential use or a residential use other than a manufactured home park. – Basically, an Owner can still do whatever they want with the Park. In the case of Stonecliff Properties the Landlord wanted to turn the Park into a 'greenspace'.

(3)A notice under this section must comply with section 45 [form and content of notice to end tenancy]. – That notice is a 12 Month Notice to End Tenancy for Conversion of a Manufactured Home Park, also known as a RTB-31 form.

(4)A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

Tenant may end tenancy early following notice under section 42
43 (1)If a landlord gives a tenant notice to end a tenancy under section 42 [landlord's use of property], the tenant may end the tenancy early by
(a)giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice.

(3)A notice under this section does not affect the tenant's right to compensation under section 44 [tenant's compensation: section 42 notice].

Tenant's compensation: section 42 notice

44 (1)A landlord who gives a tenant notice to end a tenancy under section 42 [landlord's use of property] must pay the tenant, on or before the effective date of the notice, the amount prescribed under [the Regulations]. – Note, it is the actual issuing of this Notice that triggers the compensation. I very recently did a case where an Owner issued 3 Notices to End Tenancy that did not comply with the MHPTA. He was trying to close a small Manufactured Home Park, in Houston BC, that he had recently purchased, without providing any compensation to the Tenants. The matter went before the RTB. A settlement agreement of $20 000 was reached, for two of the Tenants, during the Hearing. An Order was also issued for the third Tenant, that the Landlord comply with the Act – functionally, this forced the Owner to issue proper Notice to the third Tenant. A settlement agreement for $28 000 was reached, for third Tenant, just after the Hearing. Interestingly, I ended up developing a good relationship with the Owner after the Hearing, but only after I called him out on what he was doing.

RTB Regulation 33.1 (1)For the purposes of section 44 (1) of the Act, the amount of compensation payable by a landlord is $20 000.

44 (2)In addition to the amount payable under subsection (1), if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 42 within a reasonable period after the effective date of the notice, the landlord must pay the tenant the amount prescribed under [the Regulations]. – In the Stonecliff Properties cases, I got 4 Tenants compensation under this section, because the Landlord did not turn the Park into a 'greenspace' and instead the property lay fallow and no steps were taken to remediate the land or remove any of the structures present.

RTB Regulation 33 (2)For the purposes of section 44 (2) of the Act, the amount of compensation payable by a landlord is the greater of (a)$5 000, and (b)the equivalent of 12 months' rent payable under the tenancy agreement. – That amount was formerly 6 months pad rent.

44.1 (1)A tenant may make an application for dispute resolution to request an order for compensation in addition to the amount payable under section 44 (1) if (a)a landlord gives the tenant notice to end a tenancy under section 42 [landlord's use of property], (b)only in the circumstances prescribed in the regulations, the manufactured home is not capable of being moved before the tenant is required to vacate the manufactured home site at the end of the tenancy, and (c)the most recent assessed value of the manufactured home, as determined under the Assessment Act, is greater than the amount prescribed for the purposes of section 44 (1).

(2)If the director is satisfied that, in the circumstances prescribed for the purposes of subsection (1) (b), the manufactured home is not capable of being moved before the tenant is required to vacate the manufactured home site at the end of the tenancy, the director may order the landlord to pay to the tenant compensation equivalent to the amount by which the most recent assessed value of the manufactured home.

RTB Regulation 33.2 – Additional tenant's compensation: manufactured home is not capable of being moved
For the purposes of section 44.1 (1) (b) of the Act, the following circumstances must be satisfied: (a)the tenant is not able to (i)obtain the necessary permits, licences, approvals or certificates required by law to move the manufactured home, or (ii)move the manufactured home to another manufactured home site within a reasonable distance of the current manufactured home site; (b)the tenant does not owe any tax in relation to the manufactured home. – See also Policy Guideline 33, here.

It should also be noted that prior to June 6, 2018 about 30+ cities and municipalities in BC, adopted policies around rezoning MHPs, in light that there was no real compensation for folks under the MHPTA. These policies vary from place to place, and in some cases exceed what the MHPTA now requires. For example, some places have specific requirements around providing Notice to End Tenancy – if I recall, this also includes providing 2 years Notice in a few of those places. I assisted with such a policy in Kitimat. These policies are still in effect and should be consulted where they exist.

6. RV Parks / Zoning Conflicts

In the last few years, as any thought of affordable market rental housing in BC has virtually disappeared, RV Parks have become a haven for many seniors and folks who are on limited incomes. There are thousands of people live in these RV Parks full-time, in their '5th wheels'. One such Park is Peace Arch RV Park in Surrey, BC, where on October 30th, 2019, the RV park managers gave about 300 long-term residents from roughly 180 RV sites notice to leave by May 1, 2020. This is just after an October 24, 2019 RTB Decision where the Arbitrator decided the 16 Peace Arch residents who filed a complaint seeking to clarify their status as tenants, are not covered under the MHPTA.

The Peace Arch RV Park Administration, misleadingly stated the reason for the notice, was because "A recent Residential Tenancy Branch Hearing and subsequent decision has highlighted an error we have made as management regarding the length of stay permitted in our form of Park." CBC reporter, Maryse Zeidler ran a series of articles on the matter, which allowed me to have a forum to criticize what the Park was wrongly doing. These articles along with a number of radio interviews, played a factor in the Park in rescinding their notice to leave, on November 25, 2019.

On March 12, 2020, I took on the matter of establishing Tenancy for one of the Park's residents. I also had to face off against Allen / McMillan Litigation in doing so. The case was won for my clients by systematically going over Residential Tenancy Policy Guideline 9. Tenancy Agreements and Licenses to Occupy, which I will provide an overview of, momentarily.

I had to do a fair bit of work and research on the case, due in part, to the RTP Guideline dating back to January 2004. I was aware that there had been a number of Supreme Court of BC decisions since then, that had something to say about the matter. I had the privilege of dialoguing with a couple of my contacts at the Residential Branch and was able to consult with them in helping update the Guideline.

In May 2020, Guideline 9 was updated. And now, the fact if a Tenant's home is their permanent primary residence, it needs to seriously weigh in on finding whether they have a Tenancy, as indicated in the Policy. 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" [para.111]. Also, in Steeves v. Oak Bay Ltd., the Court pointed out that there are situations where an RV may be a permanent home if it is occupied for "long continuous periods" [para.108]. Note further, Guideline 9. states, "if the home is a permanent primary residence then the MHPTA may apply even if the home is in an RV park or campground."

There are over 15 factors in the Guideline that may help distinguish a tenancy agreement from a licence to occupy.

On June 29, 2020 and September 1, 2020, I took another Peace Arch RV Park case before the RTB, to try out the new Guideline. And this time I had to face off against the legendary Wally Oppal – yes, I found out he is actually still practicing law.

On September 17, 2020, the Arbitrator issued what is probably the most thorough decision on the subject.

The Arbitrator penned, I agree that

while there are similarities to both a landlord and tenant relationship and a licensor and licensee relationship, that on the whole, having considered all of the evidence before in its totality, I find that the Act applies to these living arrangements and that the parties have a landlord and tenant relationship.

In reaching this decision, I have applied significant weight to the photo evidence, which I find clearly supports that the fifth wheel has decking added around fifth wheel and custom stairs for the tenants' use and that it is not easily removeable and is more permanent in nature. I also accept that there are frost-free lines to the fifth wheel and that the fifth wheel meets the definition of a manufactured home under the Act as per PG9. I also afford little weight to the zoning of the park as PG20 clearly states that municipal bylaws are not statutes for the purposes of determining whether a contract is legal. Furthermore, there is no evidence before me that the City of Surrey has ever approached park management to enforce zoning bylaws.

In addition, I find that since November 2015 to the time of the application on June 5, 2020, is over five years, which is a significant time period that supports permanence factors listed in PG9 as follows:

> 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.**

Furthermore, I find the tenants have provided sufficient evidence to support all four of the bolded points directly above as there is a nose-cone, decking and skirting which were either permitted explicitly or implicitly, the tenants reside in the fifth wheel year-round, and have been doing so for over five years and have not moved the fifth wheel, except in 2016 from site L1 to the current site, J17.

. . . I have also considered the *Wiebe* decision as *Wiebe v Olsen*, 2019 BCSC 1740, states "there is no statutory requirement that a landlord's property meet zoning requirements of a manufactured home park in order to fall within the purview of the MHPTA."

While the owners may not wish to be landlords, I find that in this specific case, and taking into account the "whole scenario" as described by counsel for the respondents, I find the owners of the park are landlords and the applicants are tenants under the Act. I also find that GST was unilaterally charged on site rent by the landlord as of September 2019 in what I find is more likely than not an attempt to change the nature of the relationship between the parties.

….And although I was very happy with this decision, I also recently lost a decision in another lower mainland RV Park. The good news is the decision was so bad it gets to go BC Supreme Court, on November 25, 2020 thanks to our friend Danielle Sabelli at CLAS. We are hoping that this case will ultimately further the cause for folks who live permanently in RV Parks.