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Land Lease Community E-newsletter

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Ron and Tenant Advocate Matt Boxhall

Tales from the riverside

By Julie Lee, Tenants' Union of NSW

It was difficult to know where to start this article – it could have so many themes but essentially it is about one man who just wants to live quietly in the land lease community he chose as his place of retirement.

Ron purchased his home in a riverside caravan park in south west New South Wales in November 2013. He had sold his previous home and had a short stay as tenant in caravan park close by. Ron was clear with the operator that he wanted to live in the community and needed a home that would allow him to do that. The operator offered to sell him a place and said his occupation had to be approved by the committee.

Ron's application was approved and he purchased the home from the operator. However, he was presented with an occupation agreement rather than a site agreement and advised that if anyone asked he was to say he was an "annual". Ron signed the agreement, returned it to the operator and started paying rent. The operator signed his Commonwealth Rent Assistance form and Ron sent it off to Centrelink.

For the next five and a half years Ron lived at the community and during this time no issue was ever raised regarding his residence or occupancy. However, in 2019 it suddenly became an issue.

In mid 2019 the operator issued Ron with a termination notice alleging he was living on a short-term site and was in breach of his occupation agreement. The operator claimed Ron's agreement was an agreement under the *Holiday Parks (Long-term Casual Occupation) Act 2002* and that he was permitted to occupy his site for no more than 180 days per year. The operator claimed that Ron had overstayed.

A distressed Ron sought and obtained initial advice from the Tenants' Union. We checked with him what agreement he had made with the operator when he moved in and whether he had evidence that he did in fact live at the community. Although Ron had signed an occupation agreement, he advised that he and the operator had agreed verbally that he could live in the community and the operator had signed his rent assistance form. The community was Ron's legal address and he was registered to vote there. Ron had never been aware of the possibility that his agreement could be terminated in this way and he did not want to lose his home.

Having established it was likely that Ron was entitled to a site agreement we referred him to his local Tenants' Advice and Advocacy Service who had assisted other home owners in the same community. With assistance from a Tenant Advocate Ron made an application to the NSW Civil and Administrative Tribunal (NCAT). He sought a declaration that his agreement was a site agreement pursuant to the *Residential (Land Lease) Communities Act 2013,* and an order requiring the operator to prepare and enter into a written site agreement.

The Tribunal

At the hearing the operator alleged that Ron's site was short-term and it could only be occupied on a casual basis. The operator presented a copy of the approval to operate in support of this point. However, the approval was for the period 2018 – 2019, it did not specifically identify short-term and long-term sites, it was unsigned and there was no community map attached. Under questioning from the Tribunal Member the operator admitted there had been no approval to operate or approved community map in 2013 when they entered into the occupation agreement with Ron. The evidence did not support the operators' assertion and the Tribunal was *"not satisfied on the evidence of the classification of the site occupied by [Ron] in 2013 or at any time during his occupation".*

The Tribunal did not make a finding regarding the designation of the site (i.e whether it was short-term or long-term). However, it noted the obligations of the operator under the *Local Government Act 1993* are quite separate and distinct from the agreement between the parties for occupation of the site and did not preclude an order being made requiring the operator to prepare and enter into a site agreement provided the *Residential (Land Lease) Communities Act* applies.

The next question for the Tribunal was whether the agreement was an occupation agreement to which the *Holiday Parks (Long-term casual occupation) Act 2002* applied, as asserted by the operator. There are four requirements that must be met for the Holiday Parks Act to apply. The first is whether the occupant entering into the agreement has a principal place of residence elsewhere. Ron was able to provide evidence that he did not.

The operator attempted to undermine Ron's evidence by providing statutory declarations and statements from other home owners in the community regarding conversations they variously had with Ron. None of the home owners were called to give evidence and the Tribunal found that *"the second hand statements of others do not establish the truth of statements he made to them".*

The Tribunal found that Ron did not have a principal place of residence elsewhere when he entered into the agreement with the operator.

Next the Tribunal found that although Ron had purchased his home from the operator this met the test that he had installed *"his own moveable dwelling on site and leaves it there all of the time the occupation agreement continues in force"*. This finding followed the reasoning of the Supreme Court in *Gennacker Pty Ltd v Bennett* [2015] NSWSC 726 on the same point.

The third requirement is whether the occupant can occupy the site for no more than 180 days in any 12-month period (in a continuous or broken period).

The operator asserted the agreement was a casual occupation agreement for no more than 180 days in any twelve month period. The operator gave evidence that Ron said he would only be at the community for a few months. This claim was undermined by the fact the operator had signed an agreement with an initial 12 month

A community map is a scale map that accurately shows the number, size, location and dimensions of sites

term and that agreement was in evidence. The operator then admitted to colluding with Ron to enable him to stay longer than 180 days a year. This collusion involved the operator issuing rent receipts that would hide the fact that Ron was living in the community if Council or NSW Fair Trading came to inspect. The receipts in evidence clearly showed that Ron had stayed at the community well in excess of 180 days in each of his five full years of occupation. The operator claimed they had falsified the receipts for the benefit of Ron.

The final test was whether Ron had consented to be a casual occupant for at least 12 months. The Tribunal found that Ron's occupation was not on a casual basis and that he had been living at the community permanently for almost six years.

The outcome

After considering the written and oral evidence the Tribunal found the agreement between the home owner and operator was a moveable dwelling agreement under the repealed *Residential Parks Act 1998* and that agreement was now taken to be a site agreement under the *Residential (Land Lease) Communities Act 2013*. The Tribunal ordered the operator to prepare and enter into a written site agreement with Ron in the relevant standard form within seven days.

This was a huge relief to Ron because it meant the termination notice issued by the operator under the *Holiday Parks Act* was invalid. Unfortunately, this was not the end of the matter.

The operator did prepare a written site agreement within seven days and presented it to Ron. However, the site fees stated in the agreement were $120 a week and under his oral site agreement Ron had been paying less. Site fees can only be increased in accordance with the RLLC Act and there is no provision to increase site fees when moving from a verbal site agreement to a written site agreement. After seeking advice Ron amended the site fees in the site agreement, signed it and returned it to the operator.

When Ron tried to pay his rent by cheque, the operator returned the cheque on the grounds it was for the wrong amount.

Shortly thereafter the operator issued Ron with another termination notice. This time on the grounds that he is living on a short-term site. The notice requires Ron to vacate in March 2020.

And then, the operator issued a third termination notice on the grounds that Ron is in arrears with his site fees. This new termination notice is based on the site fees in the new site agreement, not the site fees Ron was required to pay under his earlier verbal site agreement.

So, Ron renewed proceedings at the Tribunal to have the dispute about site fees settled. The question is whether, having found there was a verbal site agreement between the parties, and having made an order for that agreement to be put into writing, can the operator increase the site fees?

Even if Ron overcomes this hurdle and avoids termination for site fee arrears he still has the other termination notice hanging over his head. That matter will also need to be determined by the Tribunal and the outcome cannot be easily predicted. Ultimately, Ron could end up losing his place at the community despite his battle to stay.

In another riverside community, at the other end of the State a similar situation is playing out. In that case the operator was ordered by the Supreme Court of NSW to prepare and enter into a written site agreement with a home owner after unsuccessfully claiming the "efficacious" agreement was a casual occupation agreement under the Holiday Parks Act. The operator did prepare the standard form site agreement but has attached a number of pre-conditions the operator says the home owner must meet before the agreement can be entered into.

These two cases indicate there is something wrong with the system. It could be that some operators do not understand how the law applies, or they do understand and choose to ignore or try to circumvent it. It could be that the orders made by the Tribunal or the Court are not specific enough to ensure compliance. Whatever the reason, home owners are having to go to extraordinary lengths to protect, or try to enforce their rights, and that should not be necessary.

It is important to note the operators of both these communities have received attention from the regulator, NSW Fair Trading. However, we are yet to hear of any change in the behaviour of the operators.

The RLLC Act is coming up for review later this year and we anticipate operator conduct will be a significant issue raised by advocates and home owners. The improved governance of land lease communities was a key policy objective of the Act and new provisions such as operator rules of conduct indicated change may be coming. If the Act has failed to deliver, the review provides an opportunity to let the Government know, and to seek a better system for the future.

Free advice from local services:

Tenants Advice and Advocacy Services

Eastern Sydney	9386 9147
Inner Sydney	9698 5975
Inner West Sydney	9559 2899
Northern Sydney	9559 2899
Southern Sydney	9787 4679
South Western Sydney	4628 1678
Western Sydney	8833 0933
Blue Mountains	4704 0201
Central Coast	4353 5515
Hunter	4969 7666
Illawarra South Coast	4274 3475
Mid Coast	6583 9866
Northern Rivers	6621 1022
North Western NSW	1800 836 268
South Western NSW	1300 483 786

Aboriginal Tenants Advice and Advocacy Services

Greater Sydney	9833 3314
Western NSW	6881 5700
Southern NSW	1800 672 185
Northern NSW	1800 248 913

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