



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OLC, OPT, FF

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an Order of Possession of the rental unit or site, and to recover the filing fee from the landlord for the cost of this application.

The parties each appeared, gave affirmed evidence, and were given the opportunity to cross examine each other on their evidence. All evidence provided by the parties has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Is the tenant entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an Order of Possession of the rental unit or site?

Background and Evidence

The landlord's agent testified that the property contains 65 or 70 camp-site hook-ups and a few mobile home pads. This rental site is a campsite, and therefore the *Manufactured Home Park Tenancy Act* does not apply to this tenancy. She further testified that the tenant pays campground fees and GST and PST, which has now changed to HST; the fees are paid daily but a discount is offered if paid monthly. She further stated that the site in which the tenant's unit sits is not a mobile home pad; there is no water or sewer hook-up. The tenant obtains water for the unit by a hose, power by

an extension cord, and uses the campground washroom. The tenant does not pay property taxes and resides in a travel trailer which is insured under the *Motor Vehicle Act*.

The tenant testified that he has been residing in that travel trailer on the site of the landlord for 5 to 7 years, and has paid penalties that amount to 1,200% for overdue rent. He also built a deck on the side of his trailer approximately 30 feet by 8 feet. The tenant applies to the Residential Tenancy Branch to accept jurisdiction, grant the tenant an Order of Possession for the site and for an order that the landlord not be permitted to charge extra fees.

Analysis

In the circumstances, the onus is on the tenant to prove that a tenancy agreement exists in order to satisfy me that the Residential Tenancy Branch has jurisdiction over the rental. Factors that I must take into consideration include whether or not the travel trailer is intended for residential rather than recreational use; that the home is located in a manufactured home park, not a campground or RV Park; whether or not the property meets zoning requirements for a manufactured home park; whether or not the rent includes GST calculated thereon; whether or not utilities are included; and whether or not there is access to services and facilities usually provided in ordinary tenancies, such as frost-free water connections.

I find that, although the tenant used the travel trailer as his primary residence, there is no tenancy agreement. I find that the tenant has failed to establish that the site used for the travel trailer is located in a manufactured home park or that the site meets zoning requirements for a manufactured home park, although there are other sites within the property that do meet those zoning requirements. Further, the tenant pays PST and GST (now HST) calculated in the rental amount, and the services are not services that are usually provided in ordinary tenancies. The tenant has failed to establish that a tenancy agreement exists.

Conclusion

For the reasons set out above, I find that the *Manufactured Home Park Tenancy Act* does not apply, and therefore I have no jurisdiction to make an order. The tenant's application is hereby dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 25, 2010.

Dispute Resolution Officer