



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This is the Tenant's application for return of prepaid pad rent and to recover the cost of the filing fee from the Landlord.

Both parties signed into the Hearing and provided affirmed testimony. It was determined that the Tenant served the Landlord with the Notice of Hearing documents, by handing the documents to the Landlord's agent "Sarah" at the Landlord's office on February 22, 2011. The Tenant acknowledged receipt of the Landlord's documentary evidence. The Tenant did not provide any documentary evidence.

Preliminary Matter

At the outset of the Hearing, the Landlord's agents testified that this was not a manufactured home park tenancy and that therefore the Manufactured Home Park Tenancy Act (the "Act") did not apply.

The Landlord's agent testified that the parties signed a camper's agreement and not a tenancy agreement. The Landlord's agent testified that permission to use the site could be revoked at any time and that the Tenant could vacate the campsite without notice. The Landlord's agent testified that the Tenant was provided with a camping permit every month, and provided copies of some of the permits in evidence. The Landlord's agent submitted that the Tenant enjoyed a licence to occupy and not a tenancy.

The Tenant testified that he was parked in the same location where manufactured homes were parked and that some people had lived there for 7 years. The Tenant stated that the only difference was that his trailer had wheels.

Analysis

Residential Tenancy Policy Guideline #9 clarifies factors that distinguish tenancy agreements from licences to occupy. The following is a couple of excerpts from Guideline #9:

A license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or "licensee", is given permission to use a site or property, but that permission may be revoked at any time. Under a tenancy agreement, the tenant is given exclusive possession of the site for a term, which can include month to month. The landlord may only enter the site with the consent of the tenant, or under the limited circumstances defined by the Manufactured Home Park Tenancy Act. A licensee is not entitled to file an application under the Manufactured Home Park Tenancy Act.

If there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created, unless there are circumstances that suggest otherwise. Some of the factors that may weigh against finding a tenancy are:

- Payment of a security deposit is not required.
- The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.
- The occupier pays property taxes and utilities but not a fixed amount for rent.
- The owner, or other person allowing occupancy, retains the right to enter the site without notice.
- The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.
- The parties have agreed that the occupier may be evicted without a reason, or may vacate without notice.

It is also important to note that the passage of time alone will not change the nature of the agreement from license or tenancy.

Tenancies involving travel trailers and recreational vehicles

Although the Manufactured Home Park Tenancy Act defines manufactured homes in a way that might include recreational vehicles such as travel trailers, it is up to the party making an application under the Act to show that a tenancy agreement exists. In addition to any relevant considerations above, and

although no one factor is determinative, the following factors would tend to support a finding that the arrangement is a license to occupy and not a tenancy agreement:

- The manufactured home is intended for recreational rather than residential use.
- The home is located in a campground or RV Park, not a Manufactured Home Park.
- The property on which the manufactured home is located does not meet zoning requirements for a Manufactured Home Park.
- The rent is calculated on a daily basis, and G.S.T. is calculated on the rent.
- The property owner pays utilities such as cablevision and electricity.
- There is no access to services and facilities usually provided in ordinary tenancies, e.g. frost-free water connections.
- Visiting hours are imposed.

Based on the testimony of both parties and the documentary evidence provided by the Landlord, I find that the Tenant had a licence to occupy and not a tenancy agreement, for the following reasons:

1. The sites are rented out on a day-to-day basis using a camping permit, and may be cancelled at any time. During the spring and summer months, camping fees are collected on a monthly basis, with lower rates charged if the camper commits to staying longer than one month. In a tenancy agreement, rents can be increased only once a year and increases must be calculated on a formula provided by the Manufactured Home Park Tenancy Regulation.
2. G.S.T. was calculated on the monthly rent.
3. Day visitors must pay user fees. The Management reserves the right to ask visitors to leave. Overnight visitors must be registered at the office as charges may apply.
4. The Tenant was provided with a "Camping Permit" on a monthly basis.

Having found that this is not a tenancy, I decline to accept jurisdiction.

Conclusion

I decline to accept jurisdiction as I find that this was not a tenancy, but a licence to occupy.

Dated: May 17, 2011.

Residential Tenancy Branch