



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNC, MNDC

### Introduction

This hearing was held in response to the tenant's Application requesting a Notice to End Tenancy for Cause be cancelled. The tenant also applied requesting compensation for damage or loss under the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The tenant requested that the application be delayed as he is currently in discussions with the purchaser of the property, who may agree to buy the manufactured home.

The landlord responded that the tenant has had ample opportunity to prepare for this hearing and that a failure to proceed would be prejudicial to the landlord.

I determined that the hearing would proceed; that I would consider jurisdictional issues and the matters before me.

### Jurisdiction

The tenant has lived on the 130 acre property since 2000. He made an arrangement with the owner at the time, to live in a manufactured home, which the tenant purchased from the property owner. During the time on the property the tenant paid property taxes only; no rent payments were made to the property owner. The tenant understood that if he were ever to leave the property the landlord would purchase the home from the tenant.

A rock quarry existed on the property and the property owner was free to come and go from the land as he wished. The property owner deceased in August 2010; and the tenant remained living on the property.

Both parties agreed that on July 28, 2011, the property was transferred to the new owners through a completed sale. The parties did not dispute that the Manufactured Home Park was sold and would not be used as a park by the new owners.

The tenant submitted that he had not entered into a tenancy agreement but that he had a license to occupy. The tenant submitted that the terms of his agreement with the landlord had been one that allowed him to remain on the land, to pay property taxes and that this failed to constitute a tenancy under the Act.

The landlord responded that the payment of property taxes was the equivalent of rent payments and that a tenancy had been contemplated between the parties.

#### Jurisdiction – Analysis

Residential Tenancy Branch policy indicates that the Manufactured Home Park Tenancy Act does not contain any determination that a tenancy is also a license to occupy and that the Manufactured Home Park Tenancy Act does not apply to an occupation of land that under the common law would be considered a license to occupy.

Policy defines a license to occupy as a living arrangement that is not a tenancy. Under a license to occupy, a person 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 or, on a month-to-month basis. 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. I find this to be a reasonable stance.

There is no evidence before me that the arrangement with the occupant and the previous property owner was a tenancy agreement; that there were any terms which the tenant was required to adhere to; or that the Act was applied to this agreement at any time during the eleven years the tenant lived on the property.

Residential Tenancy Branch policy also suggests that a dispute resolution officer may consider factors that would weigh against finding a tenancy; such as if the owner retains access to, or control over portions of the site; whether the occupier pays property taxes and utilities but not a fixed amount for rent and if the owner, or other person allowing occupancy, retains the right to enter the site without notice.

The parties agreed that no rent was paid. The tenant disputed the landlord's submission that the tax payments were made in lieu of rent owed. I find, on the balance of probabilities, that the tenant had an arrangement to pay property taxes, which provided

him with the right to occupy the property. I have determined that property tax payments did not constitute rent payments and find that the policy is reasonable in suggesting that a fixed amount for rent is separate from property tax payments made by the occupier. In the absence of any written tenancy agreement, setting out the terms of the tenancy, such as exclusive possession of the property to the tenant, or any other evidence that this living arrangement was anything but an agreement to occupy, I decline jurisdiction.

Conclusion

Jurisdiction is declined.

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

Dated: August 24, 2011.

---

Residential Tenancy Branch