



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, MNDC, LRE, OLC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the *Manufactured Home Park Tenancy Act* (the "Act") seeking an order requiring the landlord to make repairs, for an order requiring the landlord to comply with the Act, for an order suspending the landlord's right to enter the rental unit, a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The parties and the landlord's legal counsel appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Issue:

The landlord/applicant's legal counsel raised the issue of jurisdiction under the Act, contending that the residential property in question was not a manufactured home park, but rather was a recreational vehicle park.

Therefore the issue of jurisdiction was explored during the hearing.

Issue(s) to be Decided

Does the *Manufactured Home Park Tenancy Act* apply to this dispute and do I have jurisdiction to decide the dispute?

Is the tenant entitled to a monetary order, orders for the landlord and to recover the filing fee?

Background and Evidence

The tenant submitted documentary evidence showing a receipt for “3 months rent on Site #2.” I confirmed that the date the first month of occupancy relating to this receipt was July 1, 2012.

The tenant stated that the vehicle on the site was a “5th wheel” and that he had it dropped off a few days before the occupancy began.

I heard testimony from the landlord that the property in question was 2 acres, located in an area of the province which is typically only frequented by tourists and campers in the summer months, has three houses, 2 of which are rented on a permanent basis, and 1 which is rented on a nightly basis.

The landlord said that all other sites are used by recreational vehicles on a seasonal basis. The landlord further stated they do not have any occupant staying for the entire year and that the park is not zoned as a manufactured home park.

The landlord stated that they provide the electricity and water for the site and although they usually issue receipts for the daily or monthly fee with added HST, in this particular case they did not as a favour to the tenant as he rented the cabin from them earlier in the year.

The tenant contended that this dispute fell under the Act as the home was his permanent home and that he tried to arrange for a 6 month stay.

Analysis

In order for me to make a decision on the applicant's application, I must first decide if I have jurisdiction to decide the dispute.

Section 1 of the Act defines a “manufactured home park” as the parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located and a “manufactured home site” as a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home.

Also, a “manufactured home” is defined as a structure, whether or not ordinarily equipped with wheels that is designed, constructed or manufactured to be moved from one place to another by being towed or carried and used or intended to be used as living accommodation.

The Residential Tenancy Policy Guideline 9 addresses jurisdiction under the *Manufactured Home Park Tenancy Act* and the distinctions between tenancy agreements and licenses to occupy; it provides:

This Guideline clarifies the factors that distinguish a tenancy agreement from a license to occupy. The definition of “tenancy agreement” in the Residential Tenancy Act includes a license to occupy. However, the Manufactured Home Park Tenancy Act does not contain a similar provision and does not apply to an occupation of land that under the common law would be considered a license to occupy.

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.

The guideline contains the following remarks concerning 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.

The following factors are provided in the Guideline that supports a license to occupy and not a tenancy agreement when involving travel trailers and recreational vehicles.

1. The home is intended for recreational rather than residential use;
2. The home is located in a campground or RV park, not a Manufactured Home Park;

3. The property on which the manufactured home is located does not meet the zoning requirements for a Manufactured Home Park;
4. The rent is calculated on a daily basis, and GST is calculated on the rent;
5. The property owner pays utilities such as cablevision and electricity;
6. There is no access to services and facilities usually provided in ordinary tenancies such as frost free water connections;

I accept the landlord's testimony that the property is intended for recreational rather than residential use, that the property is zoned as a campground or RV park and not a Manufactured Home Park; that they have in the past required payment of HST; and that the tenant was not provided not services normally associated with normal tenancies such as frost-free water connections.

Upon application of the above noted guidelines, I am persuaded by the respondent's testimony and find the preponderance of evidence supports that the property is a campground and recreational vehicle park and not a manufactured home park as defined in the *Act*.

Based on the testimony and evidence provided, I find the applicant has failed to provide sufficient evidence that a tenancy within a manufactured home site exists within a manufactured home park as defined in the *Act*.

Conclusion

As a result of my findings above, I decline jurisdiction to resolve this dispute.

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 29, 2012.

Residential Tenancy Branch