# Dispute Resolution Services



Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HEZZ CAMP CO. LTD. d.b.a. RIVERBEND RESORT
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes CNC FF

Preliminary Issues

The Respondent confirmed that the Respondent should be named as the Corporation doing business under the resort name. Accordingly, the style of cause was amended to include the Corporation's name, in accordance with section *64 (3)(c)* of the *Act.*

Introduction

This hearing dealt with an Application for Dispute Resolution filed on December 3, 2013, by the Tenants to cancel a Notice to end tenancy issued for cause and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Does this matter fall under the *Manufactured Home Park Tenancy Act?*
2. If so, should the 1 Month Notice to end tenancy for cause issued November 27, 2013 be upheld or cancelled?

Background and Evidence

The Respondent testified that she is of the opinion that this matter does not fall within the jurisdiction of the *Manufactured Home Park Tenancy Act* (MHPA) because of a decision put forth during a dispute resolution proceeding on January 13, 2014, which involved other occupants of this resort.

The Respondent argued that this is not a tenancy under the MHPA because they operate a commercial business with daily office hours with 24 hour access by phone and security. They are registered with various on-line reservation companies who book their facility. She has managed this facility since June 2005 and these occupants were already occupying a site at this property at that time. They have occupied a few different sites over the years; as supported by the camping permit dated January 2005, provided in evidence. She has knowledge that they have occupied two or three other sites, prior to this one, and she thinks they have been in the current site since 2006 or 2007. They are charged a daily rate and in November 2012 they began averaging their rate to a flat rate of $363.30 plus GST each month.

The Respondent pointed to her evidence which included a letter issued by Canada Revenue Agency dated August 31, 2011, which is a ruling that states they operate a commercial RV Park and must charge GST. Her evidence also included a letter from the regional district dated October 21, 2013, that states that use of their property is not zoned for permanent occupancy or residency. She argued that the Applicants' occupancy has always been temporary accommodation based on a license to occupy, which the Applicants must sign each time they pay for their stay.

The Respondent stated that she was covering all her bases and served these Occupants with a 1 Month eviction Notice for the following reason:

*Rental unit/site must be vacated to comply with a government order.*

The Applicants testified that the previous owner told them that they could stay as long as they wanted. They have lived in their trailer at this resort for several years and in this current site for seven years, since November 2006. They argued that they do not pay a daily rate and that their rent was $350.00 per month since 2006 and was increased to $363.30 effective May 1, 2013. They do pay GST because the Landlord charges it and they also have to pay utilities as their site has a hydro meter.

The Applicants argued that they were allowed to build a fully enclosed sunroom / deck beside their trailer which has a roof, walls, and windows and their trailer is fully skirted

and set up as a permanent trailer. They have their mail delivered to the resort office and resort staff is not allowed to enter their unit/site without their permission. The site is very small with one tree in front and one in back and they clean up the leaves when they fall. There is no fence bordering their site; however, it is easy to see the boundaries of their site. The site is approximately 1200 square feet, their sunroom/deck is 20' x 9' and the yard is gravel, no grass. The Applicants argued that during their seven years occupying this site they have never been asked to move, until now.

In closing, the Respondent argued that the occupants do not have exclusive possession of the site because the resort provides maintenance staff that clean up the yard area. They do not prevent occupants from cleaning up their sites but she indicated it is not a requirement during their stay.

Analysis

Section 57 (2) of the *Manufactured Home Park Tenancy Act (MHPTA)* stipulates that the director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

The *MHPTA* provides the following definitions:

A **"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities.

A **"manufactured home"** means 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.

A **"manufactured home park"** means 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.

A **"manufactured home site"** means 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.

The Residential Tenancy Branch Policy Guideline # 9 clarifies the factors that distinguish a tenancy agreement from a license to occupy. 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.

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 MHP 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 MHPTA. A licensee is not entitled to file an application under the MHPTA.

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. In order to determine whether a particular arrangement is a license or tenancy, the arbitrator will consider what the parties intended, and all of the circumstances surrounding the occupation of the premises.

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 does not pay 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.
- The written contract suggests there was no intention that the provisions of the *MPHTA* apply.

The arbitrator will weigh all of the factors for and against finding that a tenancy exists, even where the written contract specifies a license to occupy or tenancy agreement. It is also important to note that *the passage of time alone* will not change the nature of the agreement from a license to occupy or a tenancy.

In this case evidence that would support that the parties may have entered into a tenancy agreement consists of:

(1) The Applicants own the R.V. and have occupied site # 44 continuously since November 2006;

(2) The Applicants understood they could occupy the property as long as they wanted to;
(3) The Applicants have received mail delivery at this address continuously since occupying the site;
(4) The MHPTA does not provide for the collection of a security deposit and no deposit was paid;
(5) The Applicants paid a "monthly" amount of $350.00 from 2006 to May 2013;
(6) The monthly rate was increased from $350.00 to $363.30 per month as of May 1, 2013; which is the MHPTA legislated amount of 3.8%;
(7) The Applicants were not prevented from building an addition to their trailer which consisted of a 20' x 9' enclosed sunroom/deck;
(8) The trailer is fully skirted;
(9) Resort staff must seek permission from the Applicant before entering their unit or sunroom/deck;
(10) The Applicants clean up their site; and
(11) The Applicants' site is metered and they are required to pay for utilities.

Notwithstanding the forgoing evidence that supports a tenancy may exist under the MHPTA, I also considered the following evidence which would indicate this situation involves a license to occupy:

(1) The municipal zoning does not allow for permanent occupancy or residency;
(2) GST is charged on all payments for occupation;
(3) The occupants must sign a guest registration document agreeing to the terms and conditions of a license to occupy each time they make a payment for occupation;
(4) The Respondent argued that either party may end the license to occupy without notice, however a 1 Month Notice was served upon the Applicants by the Respondent;

Notwithstanding the Canada Revenue Agency GST ruling, I have weighed the above factors and find this arrangement to be a tenancy under the *Manufactured Home Park Tenancy Act*, as the reasons supporting a tenancy outweigh the reasons to find against a tenancy. Accordingly, I accept jurisdiction in this matter.

Upon review of the 1 Month Notice to End Tenancy issued November 27, 2013, I find the Notice to be completed in accordance with the requirements of section 45 of the Act and I find that it was served upon the Tenants in a manner that complies with section 81 of the Act and the effective date of the Notice is **December 31, 2013.**

The Notice was issued pursuant to Section 40(1) of the Act for the following reasons:

*Rental unit/site must be vacated to comply with a government order.*

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to end tenancy.

Upon review of the October 21, 2013, letter issued by the Regional District, I do not find this letter to be a "government order". Rather, I find this letter to be a notice to the Landlord reminding them of the current zoning of their property and advising them the type of occupation permitted under such zoning. I make this finding in part because this letter does not stipulate it is a compliance order, there is no specific time frames listed during which the Landlord must become compliant; it does not stipulate what the penalty will be if the Landlord does not comply with this letter, such as issuance of a fine; nor does it indicate options for the Landlord, such as a right to appeal or an application for a variance in zoning. The letter simply states "Should your cooperation not be forthcoming, the matter will be reported to the Board for further legal action as may be necessary". It is reasonable to conclude that such action may be the issuance of a government order that would clearly outline the consequences if the order is not followed.

Based on the foregoing, I find the Landlord has provided insufficient evidence to uphold the reasons listed for issuing the 1 Month Notice to end tenancy. Accordingly, I hereby grant the Tenants' application to have this Notice cancelled.

If however, the Landlord is issued a government order at a future date, the Landlord would be at liberty to issue another 1 Month Notice to end tenancy at that time.

The Tenants have been successful with their application; therefore I award recovery of the **$50.00** filing fee.

Conclusion

The 1 Month Notice to end tenancy issued November 27, 2013, for cause is HEREBY CANCELED and is of no force or effect.

The Tenants have issued a Monetary Order in the amount of **$50.00.** The Tenants may choose to deduct this monetary amount from their next rent payment or they may choose to collect upon this Order, once it is served upon the Landlord.

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: January 27, 2014

Residential Tenancy Branch