



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR

### Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. Both parties appeared at the hearing and were provided the opportunity to present evidence and make submissions to me.

My authority to resolve disputes is delegated by the Director of the Residential Tenancy Branch under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*. This application was filed under the *Manufactured Home Park Tenancy Act* (the Act). After hearing some of the respondent's opening remarks, I questioned whether the Act applies to this living arrangement. As to the reason the respondent issued a 10 Day Notice to End Tenancy for Unpaid Rent on a form published by the Residential Tenancy Branch for use under the Acts administered by the Director, the respondent stated that he made enquiries with an Information Officer with the Residential Tenancy Branch and was advised that the Act applies to their arrangement and if rent is outstanding the respondent would have to issue a 10 Day Notice. The parties were informed that information provided by an Information Officer is not determinative or binding. Accordingly, I made enquiries with both parties as to the nature of their relationship and occupation of the subject property in an effort to determine whether the Act applies.

It is undisputed that there is no written agreement between the parties. Nor, was I provided any documentary or photographic evidence pertaining to use of the property. As such, I have had to make this decision based upon oral testimony.

The respondent stated that the applicant had started "squatting" on the property several years ago, unbeknownst to the landlord for several years. The respondent described the property as being approximately 5 acres of rural and heavily treed property that was accessible by logging roads. The respondent did not know exactly how the applicant gained access and provided various different years as to when he came to learn the applicant was occupying the property. The respondent stated that learned the applicant

was occupying his land after he saw the applicant walking down the roadway one day several years ago and they had a discussion about it. However, the respondent also stated that he could not recall exactly and suggested I ask the applicant for more details. As for services and facilities at the property, the respondent stated that he provides no services to the land such as electricity or water hook-ups but that he does permit the applicant to access other land he owns that has a pool of water that the tenant draws water from. The respondent also testified that he has livestock on the property and the applicant has also expressed interest in bringing livestock onto the property but the respondent does not agree with the area the applicant intends to use for such purposes.

The applicant testified that he began occupying the property in 2000 or 2001 with the respondent's permission so as to provide some security and protection to the property from illegal dumping. The applicant also stated that he did work for the respondent, including tree falling, excavating and gravel hauling. The applicant confirmed that he is not provided electricity or water connections at the property. Rather, he uses solar power and a generator for electricity and pumps non-potable water from a cistern that is on nearby land owned by the respondent.

The respondent characterized the living accommodation as being a recreational vehicle brought on to the property by the applicant. The applicant described his living accommodation as being a mobile home now that he has "blocked" the wheels and installed skirting.

The applicant stated that in 2010 he started paying the respondent \$150.00 per month for use of the land and that it was paid in cash and by way of providing other services and labour to the respondent. The applicant stated that starting 2013 the parties agreed that the applicant would have to pay \$300.00 per month for use of the land. The respondent provided consistent testimony that he expected to receive \$300.00 per month starting in 2013.

Pursuant to section 2 of the Act, "...this Act applies to tenancy agreements, manufactured home sites and manufactured home parks. Below, I provide the definition of tenancy agreement, manufactured home site, and manufactured home park.

"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;

"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;

"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;

It is important to note that the definition of "tenancy agreement" does not specifically include a "license to occupy" whereas a "license to occupy" is included in the definition of "tenancy agreement" under the Residential Tenancy Act. As a result of this difference, licenses to occupy are important to distinguish from tenancy agreements under the Act. The Residential Tenancy Branch has published Policy Guideline 9: *Tenancy Agreements and Licenses to Occupy* with a view to assisting parties differentiate between a tenancy agreement and a license to occupy. Below, I have reproduced portions of the policy guideline, with my emphasis underlined.

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.

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.
- The written contract suggests there was no intention that the provisions of the Manufactured Home Park Tenancy Act 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 or tenancy agreement. 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.

In this case, I am satisfied that the applicant was given permission, either expressly or implicitly, by the respondent to occupy the property, although the date that permission was given is uncertain. I am also satisfied that the applicant is required to compensate the respondent for his use of the land. However, upon consideration of the following factors together, I find I am unsatisfied that arrangement constitutes a tenancy as opposed to a license to occupy:

1. The applicant is not provided access to services and facilities usually provided to tenants, such as electricity connections or water lines.

2. I heard that the respondent keeps livestock on the property and it appears the respondent has the ability to access the land without gaining the applicant's consent or giving notice.
3. The applicant brought a recreational vehicle onto the property rather than a manufactured home.
4. I heard no evidence to suggest this property is zoned for a manufactured home park.

In light of the above considerations, I have declined 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: November 01, 2016

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Residential Tenancy Branch

