



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPT, AAT, O

### Introduction

This hearing dealt with the applicants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession of the rental unit, pursuant to section 54;
- an order to allow access to or from the rental unit or site for the applicants or their guests, pursuant to section 70; and
- other unspecified remedies.

The applicant, SH ("applicant") and the respondent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The applicant confirmed that he is the owner of the applicant company named in this application and that he had authority to represent it as an agent at this hearing. This hearing lasted approximately 53 minutes in order to allow both parties to fully present their submissions.

The respondent confirmed receipt of the applicants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the respondent was duly served with the applicants' application.

### Preliminary Issue – Jurisdiction to hear Matter

Both parties agreed to the following facts. The applicant owns the motorhome that was parked in the respondent's commercial parking lot. The respondent had an employment arrangement with the applicant and paid him wages for that work, while allowing him to park on the property. The applicant left the motorhome and it was towed to a highway at the arrangement of the respondent.

The respondent maintained that he allowed the applicant to park on his commercial property because the applicant was homeless and it was a courtesy. He noted that the

applicant only paid him \$100.00 for staying there, that there was no written or verbal tenancy created, and the applicant had not paid him an established rent. The respondent said that he paid the applicant minimum wage for various jobs that the applicant performed for the respondent and the applicant was collecting welfare while living there.

The applicant said that he lived in the motorhome while performing work for the respondent. He explained that he had an agreement to perform security services for the respondent at the commercial parking lot, to prevent damage and thefts in the area. He stated that he signed a written tenancy agreement with the respondent to pay \$375.00 per month or work the equivalent in wages, in order to park his motorhome in the parking lot. He maintained that he did not have a copy of the written tenancy agreement because he had to obtain the form from social assistance. The applicant explained that the form demonstrates the amount he received from social assistance to pay for rent. The respondent denied signing a written tenancy agreement with the applicant. The applicant stated that he was sent an eviction letter by the respondent to move without sufficient notice. The applicant did not provide a copy of this letter for this hearing.

Section 1 of the *Act* defines the following terms:

*"rental unit" means living accommodation rented or intended to be rented to a tenant;*

*"residential property" means*

- (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,*
- (b) the parcel or parcels on which the building, related group of buildings or common areas are located,*
- (c) the rental unit and common areas, and*
- (d) any other structure located on the parcel or parcels;*

In this case, the applicant owns the motorhome that he is occupying, not the respondent. The respondent is not renting the motorhome to the applicant. Therefore, the applicant's motorhome is not a rental unit under the *Act*. Further, the parking lot is not residential property, it is commercial property. Therefore, this claim does not fall under the *Act*.

The applicant raised the argument that his claim might fall under the *Manufactured Home Park Tenancy Act* ("MHPTA").

Section 1 of the *MHPTA* defines the following terms:

*"manufactured home" means a structure, whether or not ordinarily equipped with wheels, that is*

- (a) designed, constructed or manufactured to be moved from one place to another by being towed or carried, and*
- (b) used or intended to be used as living accommodation;*

*"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;*

*"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;*

*"service or facility" includes any of the following that are provided or agreed to be provided by a landlord to the tenant of a manufactured home site:*

- (a) water, sewerage, electricity, lighting, roadway and other facilities;*
- (b) utilities and related services;*
- (c) garbage facilities and related services;*
- (d) laundry facilities;*
- (e) parking and storage areas;*
- (f) recreation facilities;*

*"tenancy" means a tenant's right to possession of a manufactured home site under a tenancy agreement;*

*"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;*

As per the above definitions, the applicant's motorhome is likely a "manufactured home." However, the respondent's commercial parking lot does not offer any of the "services" or "facilities" as described in the definition above. It does not have water, sewerage, electricity, utilities, garbage facilities, laundry or recreation facilities. Therefore, this matter does not fall under the definition of an *MHPTA* "tenancy agreement" because it does not involve possession of a manufactured home site together with the use of common areas and services and facilities.

Accordingly, I find that I do not have jurisdiction to hear the applicants' application as neither the *Act* nor the *MHPTA* apply to this matter.

I advised both parties about my decision during the hearing. I notified the applicant that he could pursue the applicants' claim at the Provincial Court of British Columbia or the Supreme Court of British Columbia, if he wished to do so.

Conclusion

I decline to hear the applicants' application as I have no jurisdiction under the *Act* or the *MHPTA*.

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

Dated: November 15, 2016

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Residential Tenancy Branch