



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC, DRI, FFT, OLC

### **Introduction:**

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel a letter notice to end tenancy dated April 5, 2018
- b. An order disputing a rent increase that does not comply with the Manufactured Home Park Tenancy Act.
- c. An order that the landlord comply with the Act, regulations and/or tenancy agreement.
- d. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

### **Preliminary Issue:**

The landlord raised the issue of jurisdiction stating that the tenant is a “camper” and the Manufactured Home Park Tenancy Act does not apply. As a result it is submitted that I do not have jurisdiction. The parties are in agreement that if the Act applies, the Notices demanding the tenant vacate the rental pad and the rent increase is not valid as the landlord has not used the approved form.

The landlord gave the following evidence:

- The park is the home to both tenants covered under the Manufactured Home Park Act and campers which are not covered. The pads/camping spaces are inter-dispersed and there is no one area reserved for each.
- The tenant owns a 5<sup>th</sup> wheel that is easily moveable. The landlord provided a photo of the tenant’s home.

- The landlord testified there is no lease or other written agreement that would indicate the relationship is governed by the Manufactured Home Park Tenancy Act.
- The landlord purchased the property in 2015.
- The tenant does not pay property taxes or city water.
- The tenant moved to this site on August 26, 2015. Previously she parked her 5<sup>th</sup> wheel in an area that was primarily used for recreational vehicles.
- The site has a 50 amp. Electrical outlet whereas the manufactured home park pads have a 60 amp. Electrical outlet.
- She has been given notices as if she is a camper.
- There are 11 manufactured homes and 30 R.V.s spots.
- The tenant has always been treated as a camper.
- The tenant is subject to Park Rules and Policies. The RV Park Rules clearly provide that this is a daily rental and not subject to the B.C. Residential Tenancy Act. Presumably it was intended to mean that the Manufactured Home Park Tenancy Act does not apply as the tenant is renting a site and not a rental unit.
- The landlord referred to another decision involving a similar tenancy in the same park that was decided on April 30, 2018 where the arbitrator found in favour of the landlord on the issue of jurisdiction.
- Rent is charged on a daily basis although she gets a discount for paying monthly. The tenant is not charged GST.
- The tenant signed an Application for Extended Stay on August 26, 2015 when she moved in. That document indicates that she has read the Conditions for Extended Stay and is aware this does not constitute a Landlord and Tenant Agreement. She also signed the Conditions which state this is a rental RV Park and not governed by the B.C. Residential Tenancy Act. This document indicates it was for Site 4.
- The document provided by the previous landlord indicates Site 4 is for a large RV. And not a manufactured home.

The Tenant gave the following testimony:

- Cablevision is included with the rent for the campers. The tenant pays her cablevision directly.
- She is responsible for yard maintenance. She pays hydro, cable and WiFi directly to the providers.
- The landlord never previously mentioned the lot size to her before.
- This site has always been a manufactured home park site.

Tenant's Witness #1 gave the following testimony:

- He and his wife were the previous owners of the park. His wife's parents owned it since June 1967 when they operated it as a camp ground. He and his wife operated the park since 1991.
- The manufactured home which sat on that site was subject to a bank mortgage. The owner passed away in 2009. The home was not liveable and with the consent of the bank that home was demolished and removed.
- The tenant requested and I agreed on behalf of the landlord that the tenant could move to the site for privacy reasons.
- The tenant was always responsible for yard work.
- No one has ever been charged a security deposit.

The landlord responded as follows:

- The documents provided by the previous owner indicate this site is reserved for RV and not manufactured homes.
- The landlord purchased the park in 2015. Site #4 is an extra large RV pad with a 50 amp power hookup and not a 60 amp power hook-up as is available with manufactured homes.
- The documents show this site has always been used as a RV site.
- The applicant has been paying the same pad rent as the other campers (discounted for a monthly payment) and has never paid the rent that is paid by manufactured homes that pay property taxes separately.
- Visiting hours are imposed and the landlord retains the right to enter the site without notice.

Policy Guideline #9 includes the following:

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<sup>1</sup>. A licensee is not entitled to file an application under the Manufactured Home Park Tenancy Act.

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. For example, a park owner who allows a family member to occupy the site and pay rent, has not necessarily entered into a tenancy agreement. 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 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.

Analysis:

There are factors that would favour a determination that this is a manufactured home site and other factors that would favour a determination that the relationship is a licence to occupy and that the Manufactured Home Park Tenancy Act does not apply. After carefully considering all of the evidence and balancing all of the factors I determined this relationship is a licence to occupy and the Manufactured Home Park Tenancy Act does not apply. The most significant factors which lead to this determination are as follows:

- The site houses a 5<sup>th</sup> wheel recreational vehicle that can be moved easily and not a manufactured home that would be much more difficult to move.
- While rent is paid monthly, it is calculated on a daily basis with the landlord giving extended stay residents a discount.
- The application to rent and the rules signed by the tenant indicate that it is for an extended stay recreational use and that the Manufactured Home Park Tenancy Act does not apply.
- The documents provided by the previous owner confirm this site is for a RV and is not included as part of the manufactured home sites in the Park.
- While the previous owner's testimony implied this was a manufactured home park tenancy he did not clearly state this was discussed and agreed between the parties. The documents he provided the new owner indicate it was an RV.
- The tenant has paid rent for the last 3 years which is consistent with rent for an RV and not for a manufactured home.

- The tenant does not pay taxes and water separately as do the owners of manufactured homes.
- The electricity provided to this site is 50 amp. The electricity provided to the manufactured home sites is 60 amps.
- The zoning indicates that it is for both Recreational Vehicles and manufactured homes. The zoning is of no help.
- Visitor hours are imposed and the tenant is subject to rules that are required for Recreational vehicles. .
- There is a formal contract for the owners of manufactured homes and that is absent in this case.

### Conclusion

I have carefully considered all of the evidence. There are factors that are consistent with a determination of a manufactured home tenancy. However, after weighing the factors I determined that the relationship between the parties is more consistent with a licence to occupy and not a manufactured home park tenancy. As a result I determined that the Residential Tenancy Branch does not have jurisdiction. I declined to hear the tenant's application for lack of jurisdiction. .

**This decision is final and binding on the parties.**

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.

Dated: June 4, 2018

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Residential Tenancy Branch