



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STRANAGHAN ENTERPRISES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RPP, MNSD, MNDC

Introduction

The tenant applies for return of a travel trailer and personal belongings and for a monetary award for the loss of items not returned.

By the time of hearing the tenant had reacquired her trailer and seeks the cost of getting it back from impoundment.

Both parties attended the hearing, the landlord by its representatives, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

The initial issue is whether the parties were in a landlord and tenant relationship within the meaning of the *Manufactured Home Park Tenancy Act* (the “Act”). If the Act applies then the issue is whether the landlord has wrongfully ended this tenancy or converted the tenant’s personal possessions.

Background and Evidence

The site is an “R.V. Park” containing sixty sites most commonly used for vacation purposes. There are also campsites and a motel or cabin resort accommodation at this seaside location.

The tenant moved her travel trailer onto the property in January 2017. There is no written “tenancy agreement.” The tenant says her rent was originally \$475.00 per

month. The landlord says it is a daily rate, currently \$46.75. It is agreed that the landlord is holding a "security deposit" of \$400.00.

That rent includes cable, power, water and sewer and use of the communal facilities. But for the water lines, trailer hookups in the park are not frost free. That is, they are not insulated for winter use.

It is agreed that the tenant paid her rent monthly. It appears she paid \$650.00 per month for January, February and March 2018. She says the rent goes up to \$750.00 in the summer. Her mail is sent to the park address and she collects it from the park office, though it appears there may be some personal mailboxes for other residents in the park.

At times the tenant worked for the landlord in the park. In June 2018 there was a dispute. The tenant did not pay her rent and the landlord summarily proceeded to have the trailer towed away and impounded. The tenant's yard goods, gardening items, pots, bins of personal items and the like were apparently moved to the edge of the property.

The tenant says she was a year round resident. She produces photos showing other sites in the park on which recreation vehicles and travel trailers appear to be rather permanent structures, with porches, fences and gardens.

Mr. S. for the landlord testifies that the tenant did work for it, cleaning communal bathrooms located around the park. He admits there are about twenty year round residents in the park, living in recreational vehicles, travel trailers and busses.

Mr. S. testifies that the park is zoned by the local government as a resort park and that a manufactured home park is not a permitted use. The zoning is "Zone 5 – Commercial" and permits resort vehicle parking and campsites along with one permanent residence for a caretaker.

He says the tenant could have left anytime she wished without notice. The tenant agrees but doubts she would receive a rebate of any rent paid for any unused portion of that month. Mr. S. says the rent goes up during the summer for all "extended stay" residents. He says the tenant's trailer has been moved to three different sites in the park, though the tenant says it was only two.

Mr. S. says that the fences and decks shown in the tenant's photos are not permanent and that any of the sites shown could be vacated "within ten minutes."

He says the tenant was charged daily but paid monthly merely out of convenience. He produces what he says is the tenant's bill. It shows a daily charge and roughly monthly payments. The tenant produces her own copy of that record showing a daily charge of \$0.00.

Analysis

The *Act* is intended to apply to relationships where a tenant is given exclusive possession of a clearly delineated area for the placement and use of a manufactured home as a place to reside. By the definition of "manufactured home" in the *Act*, an item commonly known as a "travel trailer" fits the definition as it is

"... a structure, other than a float home, 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."

The question therefore is whether or not there was a "tenancy" within the meaning of the *Act*. If not, then this dispute resolution process is not available to the tenant and she must seek her relief in the courts.

The *Act* states:

"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;

Residential Tenancy Policy Guideline 9: "Tenancy Agreements and Licenses to Occupy" sets out the legal significance of a tenancy agreement. I apologize for inserting a lengthy quotation but feel it necessary to clarify the issue,

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*¹. 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.

None of these factors is conclusive. In this case I note there was a security deposit paid. It is not clear that the site boundaries were delineated between the parties or that the tenant retained “exclusive possession” of the site; that is, the right to bring an action for trespass against an interloper. If say, the landlord wished to come onto the site to change a hose bib for the water, could the tenant refuse him? The tenant did not pay property taxes and did pay a fixed amount for rent. There is no familial relationship between the tenant and the park staff indicated in the evidence. The parties agree that the tenant could vacate without notice. There was no written contract.

The Guideline goes on,

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.

I find that the tenant’s trailer was a trailer designed and intended for recreational use rather than as a residence. I find that the park is, in fact, an “R.V. Park” and is not a place designed or intended for the placement and long term use of a manufactured home in the normal sense. I find that the park property is not zoned to permit a conventional manufactured home park. I find that the rent is calculated on a daily basis and that the monthly payments were a mere convenience between the parties.

Each side presented what they say was the landlord's business records. One shows GST was charged; one doesn't. I make no determination about this facet of the evidence.

In this relationship the landlord paid the utilities. There were not the conventional, all season hook-ups normally found in a manufactured home park, but the water service may have been insulated. Canada Post did not generally provide service to individual occupants. There is no evidence that visiting hours were imposed in the park.

Having regard to the foregoing I find that there was not a tenancy agreement within the meaning of the *Act*. This was a park intended for temporary use by vacationers or travelers, staying and paying on a daily basis. Each customer had a license to occupy a designated area. None acquired a right to exclusive possession of that area. The fact that a customer like the tenant continued that relationship over a long period of time, eighteen months in this case, did not change the nature of the relationship.

Conclusion

The tenant's application is dismissed as it is not within the jurisdiction of the dispute resolution process offered under the *Act*.

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: September 28, 2018

Residential Tenancy Branch