



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC FF

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. The One Month Notice to End Tenancy for cause is dated October 1, 2018 to be effective November 1, 2018 and the tenant confirmed it was served personally on October 4, 2018. The effective date on the Notice is automatically corrected to November 30, 2018 pursuant to section 46 of the *Manufactured Home Park Tenancy Act* as a one month Notice to End Tenancy for cause must give a full month's notice and according to section 40(2) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement. The landlord confirmed they received by personal service the tenant's Application for Dispute Resolution hearing package dated October 12, 2018. I find the documents were legally served pursuant to sections 81 and 82 of the Act. The tenant applies pursuant to the *Manufactured Home Park Tenancy Act* (the Act) for orders as follows:

- a) To cancel a Notice to End Tenancy for cause pursuant to section 40;
- b) To recover filing fees for this Application.

### **Issues to be Decided:**

Do I have jurisdiction in this matter? If so, has the landlord proved on the balance of probabilities that there is good cause to end the tenancy? Or is the tenant entitled to any relief?

### **Background and Evidence:**

Both parties attended and were given opportunity to provide evidence and make submissions. The Notice to End Tenancy is a one month notice given for cause pursuant to section 40 of the Act. The landlord stated he only used this Notice under the Act for the tenant insisted he serve her with this kind of Notice. He states this matter concerns a trailer in a campground and I don't have jurisdiction as this is not a manufactured home park. The landlord stated he already has obtained a Writ of Possession from the Supreme Court effective December 1, 2018 and wanted the tenant to be advised of the consequences.

The causes stated on the Notice are that:

*the tenant or a person permitted on the property by the tenant has*

- (a) Significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- (b) Seriously jeopardized the health, safety or lawful right of another occupant or the landlord.*
- c) Has engaged in illegal activity that has, or is likely to:*
  - (i) Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.*

*2. The tenant has not complied with an order under the legislation within 30 days after the tenant received the order or the date on the order.*

The tenant's advocate contended that I do have jurisdiction over this matter. He said the question of jurisdiction was not pointed out ahead of time in the evidence. The tenant has exclusive possession of the site, there is no agreement that the landlord can enter the site and the tenant has no affiliation with the landlord. The park was new when she entered it in 2012 at a different site and section 5 of the Act states that the Act cannot be avoided by landlords or tenants.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis:**

On the question of jurisdiction, I must consider whether this arrangement is a tenancy or a license to occupy. Policy Guideline 9 addresses this as follows:

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:

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Payment of a security deposit is not required.

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The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.

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The occupier pays property taxes and utilities but not a fixed amount for rent.

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The owner, or other person allowing occupancy, retains the right to enter the site without notice.

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The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.

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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:

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The manufactured home is intended for recreational rather than residential use.

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The home is located in a campground or RV Park, not a Manufactured Home Park.

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The property on which the manufactured home is located does not meet zoning requirements for a Manufactured Home Park.

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The rent is calculated on a daily basis, and G.S.T. is calculated on the rent.

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The property owner pays utilities such as cablevision and electricity.

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There is no access to services and facilities usually provided in ordinary tenancies, e.g. frost-free water connections.

A landlord and tenant may enter into a tenancy agreement for rental of a manufactured home site upon which the tenant is entitled to bring a manufactured home. It is important to note that a binding tenancy agreement may exist even where there is no home on the site.

In relation to the factors noted above, I find this is not a manufactured home park. The evidence is that it is not zoned as one and their sign clearly states it is a campground. Rent is calculated daily at \$45 per diem with a reduction if paid monthly. There is no security deposit and the occupiers may leave at any time without notice. The receipts in evidence show that the occupier pays \$477.23 + GST for occupancy for that month. The landlord pays the utilities. There is no tenancy agreement and the landlord said the campers come and go frequently with no notice. They all have wheels and many move on. The landlord pointed out that he obtained a Writ of Possession from the Supreme Court when he asked this occupier to move on and she refused. She is still refusing.

In considering all the factors in this arrangement, I find the weight of the evidence is that this occupier has a license to occupy a site in a campground and *the Manufactured Home Park Tenancy Act* does not apply to a license to occupy. Therefore, I find I have no jurisdiction in this matter. I note the Writ of Possession allows the landlord to retain a bailiff to remove the tenant/occupier and she may be responsible for costs incurred.

**Conclusion:**

I find I have no jurisdiction in this matter.

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 22, 2018

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Residential Tenancy Branch