Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Stranaghan Enterprises Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, OLC, FFT

Introduction

This decision is in respect of the applicant's application for dispute resolution under the *Manufactured Home Park Tenancy Act* (the "Act"). The applicant seeks the following remedies:

1. an order in respect of a disputed rent increase under section 34 of the Act;
2. an order that the respondent comply with the Act pursuant to section 55 of the Act; and,
3. an order for compensation for the filing fee, under section 65 of the Act.

A dispute resolution hearing was convened on February 7, 2019, and the applicant, a witness for the applicant, the respondent's agent, and an additional agent for the respondent attended. The owner of the property was on his way to the hearing but did not arrive before the hearing concluded. There were no issues raised in respect of the service of documents, and the applicant confirmed the respondent's statement that she had received copies of the respondent's written submissions in respect of the issue of jurisdiction.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure,* under the Act, and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Preliminary Issue: Jurisdiction under the Act

The respondent argues that I am without jurisdiction under the Act. The applicant provided no argument or submissions in respect of jurisdiction.

The first step in determining whether I, as an arbitrator with delegated authority under section 9.1 of the Act, have jurisdiction is reviewing sections 2 and 4 of the Act. Section 2(1) states that the Act (and therefore my jurisdiction) applies to tenancy agreements, manufactured home sites and manufactured home parks. Section 4 of the Act states that the Act "does not apply with respect to any of the following: (a) a tenancy agreement under which a manufactured home site and a manufactured home are both rented to the same tenant; (b) prescribed tenancy agreements, manufactured home sites or manufactured home parks. The question is, then, is there a tenancy agreement as defined by the Act in this case?

Residential Tenancy Policy Guideline 27. Jurisdiction, at page 4 provides clarification on this issue as follows:

> Section 2 of the MHPTA [*Manufactured Home Park Tenancy Act*] states the Act applies to tenancy agreements, manufactured home sites and manufactured home parks. A tenancy agreement under the MHPTA does not include a license to occupy.

The above-noted policy then refers the reader to *Residential Tenancy Policy Guideline 9. Tenancy Agreements and Licenses to Occupy,* which delves into the subject of licenses to occupy. I will reproduce the relevant portion of the policy below:

[. . .] 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*.

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 policy further states the following:

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 their written submissions, a copy of which was provided to the applicant and for which she confirmed having reviewed in advance of the hearing, the respondent stated that

> We, the owner of the site, retained control of the site.
> We, the owner of the site, retained the right to enter the site at any time, without notice.
> [Applicant] and us, the owner, agreed that she was able to vacate at any time.
> The trailer was located in a campground or RV pack, not a manufactured home park.
> The extended stay monies are calculated on a daily basis.
> We, the owner pays the utilities, such as cable vision and electricity, which we distribute throughout the property, at a fee.
> Visiting hours are imposed.
> There was no damage deposit given for the stay.

Given the above submissions, and having heard no submissions from the applicant in respect of jurisdictio, based on the factors as described by the respondent I find that there is a license to occupy, and not a tenancy agreement. As such, the Act does not apply to the legal relationship between the applicant and the respondent.

Conclusion

I hereby dismiss the applicant's application as it is not within the jurisdiction of 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 Act.

Dated: February 7, 2019

Residential Tenancy Branch