



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on March 7, 2019. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act*:

- to cancel a Notice to End Tenancy for Cause; and,
- to recover the filing fee for the cost of this application.

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters – Jurisdiction

At the start of the hearing, the Respondent (Landlord) raised the issue of jurisdiction, and pointed to her documentary evidence indicating why I do not have jurisdiction.

The Respondent submitted that the Applicant moved onto the property in October of 2018. The Applicant (Tenant) is living in a "fifth wheel" travel trailer within the campground. The Applicant stated that she was under the impression, after speaking with our office, that she had rights, as a tenant, under the Residential Tenancy Act or

the Manufactured Home Park Tenancy Act. The Applicant stated that she pays \$600.00 per month to rent a campsite, which includes electricity and water hook ups. The Respondent stated that they provide free wifi to all people staying at the campground. The Applicant indicated she was given a letter, on January 3, 2019, stating that she must vacate the campground. The Applicant then took this letter, and filed an application to dispute it, leading to this hearing.

The Respondent argued that I do not have jurisdiction to hear this matter because the property is an RV Park and Campground that is not zoned or licenced as a manufactured home park. She submitted that this is not a tenancy situation, but rather a licence to occupy situation. The Respondent pointed out that the campground is not zoned to be a manufactured home park; the Applicant did not pay a security deposit; there is no tenancy agreement; the campground has visiting hours; the owner retains control of the campsites, and may request the occupant to change sites; the occupant is not required to give Notice when vacating the property.

I must determine if I have jurisdiction to hear this dispute, because in a situation like this, a licensee (occupant) is not entitled to file an application under the Act. I turn to Residential Tenancy Policy Guideline #9 which states the following:

A licence 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. A licensee is not entitled to file an application under the Manufactured Home Park Tenancy Act.

It further states that some factors that could 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 Guideline also states the following:

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. license or tenancy.

In this case, I find that the Applicants have the onus to provide evidence to support their application. Further, the Policy Guideline states that it is up to the party making an application under the Act to show that a tenancy agreement exists.

When weighing all of the different evidence and testimony on this matter, I note that this situation does not fit neatly into either category (tenancy vs. licence to occupy). That being said, I find that, based on a balance of probabilities, this living situation is more analogous to a licence to occupy living arrangement rather than a tenancy with a tenancy agreement. The Applicant has provided insufficient evidence to establish that she is a tenant living under a tenancy arrangement.

Based on the above facts, I find I do not have jurisdiction to hear this Application.

Conclusion

I decline jurisdiction to hear 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 *Residential Tenancy Act*.

Dated: March 8, 2019

Residential Tenancy Branch