



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Border RV Park / Imperial Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OT, FFT

Introduction

This proceeding was scheduled to deal with a tenant's Application for Dispute Resolution made under the *Manufactured Home Park Tenancy Act* (the Act) to deal with an "other" matter.

Both parties appeared or were represented at the hearing.

I confirmed the parties had exchanged their respective hearing materials and I admitted them for consideration in making this decision.

Preliminary and Procedural Matters

In filing this Application for Dispute Resolution, the applicant requested "...a finding that the Manufactured Home Park Tenancy Act applies to [the tenant's] rental site".

The respondent's legal counsel submitted that the applicant has not identified a dispute and there is no dispute between the parties and I do not have jurisdiction to provide a declaratory judgement in the absence of a actual dispute.

The respondent's legal counsel pointed to section 6(2) of the Act as the provision that sets outs that a landlord or a tenant may make an Application for Dispute Resolution if the parties cannot resolve a dispute referred to in section 51(1) of the Act. Section 51(1) of the Act provides:

Determining disputes

51 (1) Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that
 - (i) are required or prohibited under this Act, or
 - (ii) relate to
 - (A) the tenant's use, occupation or maintenance of the manufactured home site, or
 - (B) the use of common areas or services or facilities.

[My emphasis underlined]

The respondent's legal counsel submitted that there is no dispute between the parties; that the applicant has not raised a dispute to the respondent's attention. Nor, has the respondent requested additional monies of the applicant or given any notice of termination to him. The respondent's legal counsel is of the position that the applicant appears to be seeking a declaratory judgement but that is for the courts to make, not by way of an Application for Dispute Resolution with the Residential Tenancy Branch.

The applicant's Advocate submitted that under the Residential Tenancy Act an occupant of a hotel room may seek a finding that the Residential Tenancy Act applies to their living accommodation and that this type of application is similar except that it involves a site in an RV park.

The applicant explained that he is fearful that he will be told to vacate the site without notice based on statements he overheard the former manager make to others, and his observations of what appears to be removal of other occupants from the RV Park and he seeks confirmation he has protections under the Act. The applicant and his Advocate acknowledged that they had not set out an actual dispute in the Application for Dispute Resolution or the written submissions that accompanied it.

The applicant's Advocate stated he has received decisions from the Residential Tenancy Branch concerning other RV Parks in the past although both parties were in agreement that I am not bound by decisions issued by other Arbitrators concerning different properties.

Upon consideration of the parties' respective positions, I find the position taken by the respondent's legal counsel, that I do not have the authority to issue a declaratory judgement in the absence of an actual dispute, to be supported by sections 6(2) and 51(1) of the Act.

I have reviewed the materials served upon the respondent and I do not see a dispute between the parties that requires resolution. I am of the view that providing testimony concerning statements made by a former manager after the hearing commenced to be unfair and does not satisfy the applicant's obligation under section 52(2) of the Act. Section 52(2) of the Act provides that an Application for Dispute Resolution must include the full particulars as to the dispute that is to be the subject of the dispute resolution proceeding.

With respect to the Advocate's position that the Residential Tenancy Act provides a mechanism for making determinations that the Residential Tenancy Act applies to occupants of hotel rooms, below I reproduce section 59(6) for further reference.

Section 59(6) of the *Residential Tenancy Act* provides:

(6) An individual occupying a room in a residential hotel may make an application for dispute resolution, without notice to any other party, requesting an interim order that this Act applies to that living accommodation.

[My emphasis underlined]

It is important to note that a party making an Application for Dispute Resolution under section 59(6) of the Residential Tenancy Act may only seek an "interim order" and not a final order or decision. It is also important to note that the Manufactured Home Park Tenancy Act does not contain a similar provision for occupants of RV Parks. As such, I find the Advocate's reference to the provision of the Residential Tenancy Act is insufficient to convey authority upon me to make a declaratory judgement in the absence of an actual dispute.

In light of all of the above, I find the applicant as not sufficiently set out a dispute and I decline to accept the Application for Dispute Resolution pursuant to section 52(5)(a) of the Act, which provides:

- (5)The director may refuse to accept an application for dispute resolution if
- (a) in the director's opinion, the application does not disclose a dispute that may be determined under this Part,

Having declined to accept the Application for Dispute Resolution as it has been filed, it is dismissed with leave to reapply. The applicant may reapply should the applicant have a dispute with the respondent that requires resolution and the applicant remains of the position that the Act applies.

I make no award for recovery of the filing fee.

Conclusion

The Application for Dispute Resolution did not sufficiently set out a dispute to resolve and I declined to accept the Application for Dispute Resolution. Should the applicant have a dispute to resolve and be of the position the Manufactured Home Park Tenancy Act applies he may make another Application for Dispute Resolution to seek resolution.

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: October 01, 2020

Residential Tenancy Branch