



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OLC, ERP, RP, PSF, FF

### Introduction

This hearing was scheduled to hear the applicant's request for Orders for the respondent to comply with the Act, regulations or tenancy agreement, make emergency repairs, make repairs and provide services or facilities required by law. The applicant also requested recovery of the filing fee paid for this application. The applicant's mother appeared at the hearing to assist her son in this hearing as the applicant's mother purported that the applicant has suffered brain damage and had a difficult time remembering things. Both the applicant and his mother were provided the opportunity to present the applicant's case and respond to the submissions of the respondent.

As a preliminary issue, the applicant did not indicate the relevant Act on the Tenant's Application for Dispute Resolution. After hearing the applicant owns a travel trailer that he was permitted to place on property managed by the respondent, I amended the application to reflect this is an application made under the *Manufactured Home Park Tenancy Act* (the Act).

The respondent raised a preliminary issue of the identity of the landlord. The respondent stated that another entity actually owns the property but that the applicant named the management company as the respondent. The respondent acknowledged that the management company manages the operation of the land and has received rent from the applicant. Accordingly, I found the applicant has named a party that meets the definition of a landlord and no amendment to the application was necessary with respect to the identity of the respondent.

### Issues(s) to be Decided

1. Is there a tenancy relationship between the parties and does the Act apply?
2. If the Act applies, the Orders necessary to fulfill the requirements of the tenancy agreement, regulations and Act.
3. Award of the filing fee.

## Background and Evidence

Upon hearing testimony of both parties, I make the following findings. The applicant placed a 20 foot travel trailer on the property managed by the respondent and began residing on the property in November 2008. The verbal agreement between the parties was that the applicant would pay the respondent \$350.00 per month and the respondent would pay for water, hydro and sewer costs. At the commencement of the arrangement, there was no discussion as to the length of occupation but both parties were of the understanding that the applicant could reside on the property indefinitely and may be entitled to reduced rent in exchange for work performed on the property.

Upon enquiry, I heard from the applicant that the travel trailer has bathroom and kitchen facilities. The applicant also explained that water, hydro and sewer connections have been run to a post located at the site he occupies and the applicant hooks his trailer up to the connections at the site.

Upon enquiry, I heard from the respondent that the property is zoned "tourist/commercial" which permits tourist accommodation but not use as a manufactured home park. The property has 30 sites of which 10 are unserviced tent sites and 20 are serviced recreational vehicle sites. There are separate hydro meters in place for each serviced site but users have not been charged for electric consumption. Rather, the applicant and respondent signed a document requiring the applicant to compensate the respondent for electric usage that exceeds \$50.00 per month but the applicant does not ordinarily use more than \$50.00 per month and the applicant has not been charged for electricity. The property is heavily used by recreational campers between July and September; however, some recreational vehicles have been permitted to be stored in sites after the tourist season ended. The respondent testified that the applicant and one other individual have been permitted to occupy the property on a long term basis. The respondent was of the position that the property is a campground and that the Act did not apply to the relationship with the applicant.

On August 8, 2009, the applicant received a letter from the respondent advising that the property would be closing down for an extended period of time effective August 31, 2009. The letter indicates the reason for this closure is the failing septic field. After receiving the letter, the applicant filed this application. The respondent also testified that it did not make economic sense to keep the campground open to accommodate the applicant over the winter.

After being served with the Tenant's Application for Dispute Resolution, I heard that the respondent served the tenant with a *1 Month Notice to End Tenancy for Cause* (the

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Notice) by posting it on the door of the trailer on October 22, 2009. The respondent explained that it was issued in the event a tenancy is found. The Notice is not part of this proceeding; however, it was briefly discussed in order for the parties to attempt to reach a mutual resolution. The parties could not reach a mutual resolution and the applicant was informed of his right to dispute the Notice within 10 days of receiving the Notice and the respondent was informed of his right to request an Order of Possession.

The parties provided undisputed testimony that on or about October 31, 2009 the tenant's trailer was removed from the property and left on the road. The landlord denied having the trailer removed from the property and the tenant acknowledged that there was a likelihood the trailer was removed by other individuals not associated with the landlord.

## Analysis

The *Manufactured Home Park Tenancy Act* applies to tenancy agreements, manufactured home sites and manufactured home parks. The Act defines these three terms. A manufactured home site is a site in a manufactured home park which is rented to a tenant for the purpose of being occupied by a manufactured home. A manufactured home park is a parcel of land on which there is/are one or more manufactured home sites that the landlord rents and it includes common areas. A manufactured home is a structure, whether or not it ordinarily has wheels, that is designed to be moved from one place to another and used as living accommodation. A travel trailer may meet the definition of a manufactured home.

The definition of tenancy agreement means an agreement, whether written or oral, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services or facilities. Unlike the *Residential Tenancy Act*, the Act does not include a license to occupy in the definition of tenancy agreement. Therefore, where there is a license to occupy land rather than a tenancy agreement, the common law applies and the *Manufactured Home Park Tenancy Act* does not apply.

The Residential Tenancy Branch publishes policy guidelines to aid in the interpretation of the legislation in the context of the common law and statutory interpretation. Policy Guideline 9: *Tenancy Agreements and Licenses to Occupy* provides for factors that distinguish a tenancy agreement from a license to occupy. Under a license to occupy, permission to occupy the land may be revoked at any time and the tenant is not granted exclusive possession of the site. Whereas, under a tenancy agreement the tenant is given exclusive right to occupy the site for a specified term, which can include a month to month basis. After hearing from both parties, I find the parties approached the agreement to occupy the land very casually and I did not hear that there was discussion

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concerning the tenant's exclusive right to occupy the site versus the owner retaining access or control over the site, or whether the agreement could be revoked at any time. However, I find I heard enough evidence to find and consider the following factors:

- the tenant intended, and the landlord was aware of the tenant's intentions, to use the manufactured home as residential use and not merely recreational use;
- the site is located in a campground or RV park,
- the property is zoned for commercial tourist use and not a manufactured home park;
- rent is payable monthly and did not include GST; and,
- the land owner pays electricity and other utilities.

I have considered that the applicant has occupied the land for approximately 10 months when the respondent attempted to revoke permission for occupation in August 2009. Although, the applicant's period of occupation is considerably longer than other users of the land it is not unheard of or unreasonable to have long term licenses to occupy and the length of occupation does not in itself create a tenancy.

I find that some of the above factors are more consistent with a tenancy; however, other factors are consistent with a license to occupy. As the parties were informed at the hearing, no one factor is determinative. However, the party making the application has the burden to prove there is a tenancy agreement. I find the applicant did not sufficiently demonstrate a tenancy agreement existed as opposed to a license to occupy. Therefore, in the absence of a tenancy agreement, I decline jurisdiction to resolve this dispute and I do not have the authority to impose any Orders upon the respondent.

## Conclusion

Jurisdiction in this matter was declined as I did not find sufficient evidence of a tenancy agreement.

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 04, 2009.

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Dispute Resolution Officer