



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OLC, MNDC

Introduction

This hearing was scheduled for this date to hear the tenant's Application for Dispute Resolution for an order to have the landlord comply with the *Residential Tenancy Act (RTA)* and for a monetary order.

Prior to the hearing the respondent landlord had forwarded evidence and a request for adjournment to the applicant tenant due to the landlord's agent's unavailability for this time. The evidence and request were returned as the tenant had moved from the service address he had provided on his application.

As well, the question of jurisdiction arose at this first hearing. In this matter the dispute address is in a Recreational Vehicle park, no completed agreement for occupancy was presented into evidence but the landlord provided a blank registration form typically used in the park. The landlord also provided into evidence photographs and a map of the park and site of the dispute and facilities.

I adjourned the hearing to consider the issue of jurisdiction and subsequently if a reconvened hearing would be required, based on the determination of jurisdiction.

Analysis

The applicant had filed an Application for Dispute Resolution and checked off that he was applying under the *Residential Tenancy Act*. On first review, it is more likely that should any jurisdiction be found it would be so under the *Manufactured Home Park Tenancy Act (MHPTA)*, as such my determination of jurisdiction will be dictated by the *MHPTA*.

Section 2 of the *MHPTA* stipulates the Act applies to tenancy agreements, manufactured home sites and manufactured home parks. I must determine if there is a tenancy agreement or a license to occupy.

The Residential Tenancy Policy Guidelines #9 clarifies the difference between a tenancy agreement and a license to occupy. A license to occupy gives permission to the licensee to use the site or property but that permission may be revoked at any time. A tenancy agreement gives exclusive possession of the site for a term, which can include month to month arrangements.

Some of the factors that I must consider in determining jurisdiction include:

- Requirement for payment of a security deposit;
- The parties have agreed that the occupier may be evicted without a reason, or may vacate without notice;
- Was the manufactured home intended for recreational rather than residential use;
- The home is located in a campground or RV park;
- The rent is calculated on a daily basis and GST is calculated on the rent;
- There is no access to services and facilities usually provided in ordinary tenancies;
- Visiting hours are imposed.

In the absence of a written agreement between the parties I must base my findings on the blank registration form provided and by the evidence submitted in relation to this dispute.

The registration form submitted shows no requirement for a security deposit and stipulates that the owner of the property can evict the occupant immediately and without prior notice. It also advises the occupant of daily check out times, implying the occupant can vacate at any time. There is no indication of granting exclusive possession of the site to the occupant.

While there is no evidence of what type of manufactured home the applicant has I cannot determine if the intended use was recreational or residential. However, the documentation provided clearly indicates that the home was located in a Recreational Vehicle (RV) Park and not a manufactured home park and photographic evidence of the other types of homes in the park appear to be entirely recreational in nature.

The blank contract shows that both PST and GST are charged against the rent that is determined by rate and duration of the stay. The contract includes a requirement for the occupant to provide specific dates of their stay; an address, including phone and email; and the RV licence number.

The rules on the contract indicate that visitors must leave by 11:00 pm and that “quiet time” is from 10:00 p.m. to 8:00 a.m. daily. The RV Park provides public washroom facilities, seasonally. Specifically, these facilities are not available during the winter months. Bathroom facilities may be shared in some tenancy arrangements however, were that the case, the facilities would not close for the winter months.

Conclusion

Based on the above, I find that no tenancy exists and therefore the *Manufactured Home Park Tenancy Act* is not applicable to this issues identified in the occupant’s application and there is no requirement to reconvene this hearing.

As I have determined I have no jurisdiction under the *Act* in this particular case, I must dismiss the claims of this applicant. If the parties wish to proceed with this dispute they must attend to a court of competent jurisdiction.

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: February 23, 2010.

Dispute Resolution Officer