

DECISION

Dispute Codes MNDC, OLC, RPP, OPT

Introduction

This hearing dealt with an application by the occupant for a monetary order, an order that the respondent comply with the Act, an order that the respondent return the applicant's personal property and an order of possession. Both parties participated in the conference call hearing.

The respondent submitted evidence to the Residential Tenancy Branch on or about May 3. The respondent testified that he sent mail via ExpressPost to the applicant's address for service and provided proof of this service. The applicant's advocate testified that the address for service is her office and stated that she had not been at her office since May 5, but on that date there was no mail available for her. Section 89 of the Act permits service of documents via registered mail. The definitions section of the Act states that registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available. The respondent did not elect to request a signature confirmation for the documents sent to the advocate and although the Canada Post tracking system shows that the document was delivered, it is not possible to ascertain to whom it was delivered. As such confirmation is not available, I decline to consider the respondent's documentary evidence and my decision has been reached solely on the basis of the oral testimony of the parties.

Issues to be Decided

Does this relationship fall within the jurisdiction of the Act?

Background and Evidence

The parties agreed that in December 2009 the applicant entered into an agreement with the respondent whereby the applicant was rented a site in the respondent's RV park in which to park his 28' fifth wheel trailer.

The respondent testified that he operates a manufactured home park under a separate business license from the RV park and that the applicant only occupied a site in the RV park. The respondent charges rent by the day, week or month, depending on how long prospective occupants intend to stay. The respondent maintained that the park was generally occupied seasonally. The parties were generally in agreement about the facts of the occupancy and these facts are addressed below.

Analysis

The respondent argued that the landlord/tenant relationship in this case is excluded from the Act as it is a mere license to occupy and unlike the *Residential Tenancy Act*, the definition of "tenancy agreement" in the *Manufactured Home Park Tenancy Act* does not specify that it includes a license to occupy. I agree that the specific omission of licenses to occupy from the *Manufactured Home Park Tenancy Act* indicates that this Act is not designed to govern licenses to occupy. I have considered the Residential Tenancy Policy Guideline #9 which indicates factors to be considered in determining whether a relationship is a tenancy or a license to occupy.

The following factors weigh in favour of a license to occupy are as follows:

- A security deposit was not required.
- The section of the property which was occupied was a designated RV site.
- The respondent calculates GST as part of the rental payment.
- Rent is calculated either on a daily, weekly or monthly basis. In this case, the applicant initially paid for 3 weeks of occupation.
- Visiting hours are imposed on the guests of occupants.
- The respondent did not serve the applicant with a notice to end tenancy but with a letter advising that the occupancy was ended.

The following factors weigh in favour of a tenancy:

- The applicant lives in the fifth wheel trailer year round.
- The respondent pays for utilities and cablevision.

Having weighed the above factors, I find that I lack jurisdiction to entertain the applicant's claim because the arrangement between the parties confers upon the applicant a mere license to occupy and it is not a tenancy agreement governed by the *Manufactured Home Park Tenancy Act*.

Conclusion

The claim is dismissed for want of jurisdiction.

Dated: May 11, 2010
