



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OLC, AAT, 0

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution for a monetary order; to dispute an additional rent increase; for an order to have the landlord comply with the *Manufactured Home Park Tenancy Act (Act)* and for an order to have the landlord allow access to the unit or site for the tenant or the tenant's guests.

The hearing was conducted via teleconference and was attended by the applicant and his advocate and the respondent's agent.

The applicant had submitted evidence on August 20, 2010 to the Residential Tenancy Branch and on August 21, 2010 to the respondent's agent. As this service of documents is outside of the required 5 clear days prior to the hearing, I find I cannot consider the evidence submitted by the applicant.

Issues(s) to be Decided

The issues to be decided is whether the applicant is entitled to an order to have the respondent comply with the *Act*; to allow access to the applicant and his guests; to cancel an additional rent increase; and to a monetary order for return of additional rent increase, pursuant to Sections 24, 36, 60, and 65 of the *Act*.

Prior to any consideration of the above noted issues raised by the applicant, it must be determined, based on the respondent's assertion that the property is a campground and recreational park not a manufactured home Park in accordance with Sections 1, 2, and 55 of the *Act*.

Background and Evidence

The applicant testified that he has been living on this property since 2007 and since that time he had been paying \$200.00 but that he has had no written tenancy agreement.

The respondent's agent contends that the property is a recreational vehicle park and campground with serviced and unserviced sites. The agent testified that:

1. The property is zoned as a campground and recreational vehicle resort;

2. Rates may be determined on a daily, weekly, monthly, seasonal or yearly rate and requires the payment of GST (previously) and for future guests HST;
3. Short term guests pay no utilities but long term guests pay their own utilities;
4. Guests have access to shower facilities and laundry, gardens but there is no pool or store. The property is on city water and sewer but sites do not have permanent utility hook ups;
5. Visiting hours for non guests are set by the respondent;
6. A security deposit is paid for new guests;
7. Occupiers are allowed to build on the site but nothing permanent;
8. Occupiers do not pay property taxes;
9. The respondent retains the right to enter sites without notice; and
10. The respondent reserves the right to evict without reason or cause.

The respondent's agent further testified that in January 2010 the property transferred to new owners and but there were no documents provided to the purchasers regarding any of the arrangements between the occupants and the previous owners.

Analysis

Section 2 of the *Act* states: "Despite any other enactment but subject to Section 4, this *Act* applies to tenancy agreements, manufactured home sites and manufactured home parks." In order to have the *Act* apply to the relationship between these two parties all three of these components must be a constituent of that relationship.

Section 1 defines "tenancy agreement" as an agreement, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities. This section also defines "tenancy" as a tenant's right to possession of a manufactured home site under a tenancy agreement.

Section 1 also defines a "manufactured home park" as the parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located and a "manufactured home site" as a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home.

And finally, "manufactured home" is defined as a structure, whether or not ordinarily equipped with wheels that is designed, constructed or manufactured to be moved from one place to another by being towed or carried and used or intended to be used as living accommodation.

Residential Tenancy Policy Guideline #9 provides some guidance in determining whether or not a tenancy under the *Act* exists. The guideline states the burden of proof to show that a tenancy agreement exists is placed on the party making an application under the *Act*.

Some factors that weigh against finding that a tenancy exists include:

1. A security deposit is not required;
2. The owner retains access to or control over the site;
3. The occupier pays property taxes and utilities but not a fixed amount for rent;
4. The owner retains the right to enter the site without notice;
5. The parties have a family or personal relationship and the occupancy is given because of generosity rather than business considerations;
6. The parties have agreed the occupier may be evicted without a reason or may vacate without notice; and
7. The written contract suggests there was no intention that the provisions of the Act apply.

In the evidence and testimony before me there was no indication a security deposit had been required of this tenant at the start of his stay on this property or that there is a family or personal relationship and that occupancy was granted based on generosity.

I accept the landlord's testimony that the owner retains access to and control over the site; that the (long term) occupier does not pay property taxes but does pay utilities and a fixed amount of rent; that the owner retains the right to enter the site without notice; and the landlord's assertion that the occupier may be evicted without reason or notice.

The following factors are provided in the Guideline that support a license to occupy and not a tenancy agreement when involving travel trailers and recreational vehicles.

1. The home is intended for recreational rather than residential use;
2. The home is located in a campground or RV park, not a Manufactured Home Park;
3. The property on which the manufactured home is located does not meet the zoning requirements for a Manufactured Home Park;
4. The rent is calculated on a daily basis, and GST is calculated on the rent;
5. The property owner pays utilities such as cablevision and electricity;
6. There is no access to services and facilities usually provided in ordinary tenancies such as frost free water connections;
7. Visiting hours are imposed.

I accept the landlord's testimony that the property is zoned as a campground or RV park and not a Manufactured Home Park; that rent for longer term occupants is calculated on monthly or seasonal or yearly basis and has in the past required payment of GST; that longer term occupants pay their own utilities; the occupiers enjoy facilities normally associated with campgrounds (showers and laundry) but not services normally associated with normal tenancies such as frost-free water connections.

In the absence of a written agreement, I find that where verbal terms are clear and both parties agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal

terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise. In addition, in this case, the ownership of the property has changed hands and the original owner provided no understanding to the new owner of the arrangement that had been agreed to by the parties.

Upon application of the above noted guidelines, I am persuaded by the respondent's testimony and find the preponderance of evidence supports that the property is a campground and recreational vehicle park and not a manufactured home park as defined in the *Act*.

Based on the testimony and evidence provided, I find the applicant has failed to provide sufficient evidence that a tenancy within a manufactured home site exists within a manufactured home park as defined in the *Act*.

Conclusion

As a result of my findings above, I decline jurisdiction to resolve this dispute.

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: August 26, 2010.

Dispute Resolution Officer