



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: DRI

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Manufactured Home Park Tenancy Act*, to dispute a rent increase greater than the amount calculated under the regulations.

The notice of hearing was served on the respondent by registered mail on May 12, 2011. The tenant filed a tracking number. Despite having been served the notice of hearing, the respondent did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be Decided

Does the tenant's application fall within the jurisdiction of the *Manufactured Home Park Tenancy Act*? Does the occupancy agreement fit the definition of a tenancy agreement or is it a license to occupy? Has the respondent served the tenant with a valid notice of rent increase?

Background and evidence

The tenant owns a 5th wheel trailer that she occupies as her principal residence. She rented a pad from the respondent and moved her trailer to the respondent's park on September 1, 2004. The rent at the start of the tenancy was \$380.00 plus GST and did not include utilities.

The tenant filed a copy of the respondent's standard form of occupancy agreement for a three month term from May 01, 2010 to July 31, 2010. The agreement provides that the amount of the rent was subject to increase at the discretion of the owner and that the right to occupy may be revoked at any time.

The agreement also states that the *Manufactured Home Park Tenancy Act* does not apply and contains an acknowledgement that: "*the use of RV Pad and the facilities at RV Resort on the Lake is for recreational purposes/temporary occupancy.*" The landlord does however rent pads to a number of long term residents.

The tenant stated that in early March 2011, the landlord served her with a letter that informed her that her rent would be increased effective May 01, 2011.

The letter did not specify the amount of the increase. The tenant did not file a copy of the letter but testified as to the format and content of the letter.

Analysis

Based on the tenant's description of the notice of rent increase, there is no doubt that under the *Manufactured Home Park Tenancy Act*, this notice would be of no force and effect. It was not in the prescribed form, was not served within an appropriate time and did not notify the tenant of the amount of the rent increase.

The issue of whether this landlord/tenant relationship is excluded from the *Act* is addressed in *Residential Tenancy Policy Guideline 9 Tenancy Agreements and Licenses to Occupy* and provides in part as follows:

This Guideline clarifies the factors that distinguish a tenancy agreement from a license to occupy. The definition of "tenancy agreement" in the *Residential Tenancy Act* includes a license to occupy. However, the *Manufactured Home Park Tenancy Act* does not contain a similar provision and does not apply to an occupation of land that under the common law would be considered a license to occupy.

A license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or "licensee", is given permission to use a site or property, but that permission may be revoked at any time. Under a tenancy agreement, the tenant is given exclusive possession of the site for a term, which can include month to month. The landlord may only enter the site with the consent of the tenant, or under the limited circumstances defined by the *Manufactured Home Park Tenancy Act*. A licensee is not entitled to file an application under the *Manufactured Home Park Tenancy Act*.

Policy Guideline 9 sets out factors which may weigh against a finding that a tenancy exists, and additional factors which may indicate a license to occupy when a recreational vehicle or travel trailer is involved. I have considered those factors in the context of this case, and have made the following findings of fact:

1. The RV Resort on the Lake is a vacation resort which was designed primarily for travel or recreational use.
2. Rent is calculated on a daily or monthly basis, and there are seasonal rates. The rates can be changed by the respondents without any notice to the occupants.
3. GST/HST is payable by all occupants, whether short-term or long-term.
4. No security deposit has been required by the respondents or paid by the applicant.

5. Utilities—the cost of electricity and telephone is paid by the occupant. Cable vision, water and sewage disposal is paid for by the respondents.
6. The Agreement which is signed between the respondents and occupants does not refer to tenancy agreements, landlords or tenants. There is no reference to granting exclusive possession, or security of tenure.
7. The respondents have reserved the right to enter the site and pads without notice, and have done so when necessary.

Weighing in favour of a tenancy are the following factors:

1. The applicant intended to have a long-term residence at the RV Resort on the Lake.
2. The applicant has lived at the RV Resort on the Lake year-round since 2004.
3. The applicant pays rent monthly.

I conclude on a balance of probabilities based on the evidence presented, that the applicant has not met the onus of proof to show that a tenancy exists. The majority of the evidence did not support a finding that there is a tenancy in place between the parties. The agreement between the parties constitutes a license to occupy.

Pursuant to Residential Tenancy Policy Guideline 9 *Tenancy Agreements and Licenses to Occupy*, the *MHPTA* does not apply to licenses to occupy. The *Residential Tenancy Act* does not apply because the applicant owns the home in which she resides.

Conclusion

I have determined that I lack jurisdiction to entertain the tenant's claim because the arrangement between the parties confers upon the tenant a mere license to occupy and it is not a tenancy agreement governed by the *Manufactured Home Park Tenancy Act*. The application is therefore dismissed, for lack of 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: June 07, 2011.

Residential Tenancy Branch