



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, PSF, O

Introduction

This hearing dealt with an application by the tenant for money owed or compensation for damage or loss, to order the landlord to provide services and other. Both parties participated in the conference call hearing.

Preliminary Issue

Before considering the merits of this Application for Dispute Resolution I must determine whether I have jurisdiction in this matter.

Background and Evidence

The park manager testified that the tenant occupies a travel trailer that is not intended for residential use and the park is designated as an RV Park and does not meet zoning requirements for a Manufactured Home Park and the owner of the RV Park pays directly for all utilities.

The park manager stated that many of the sites in this RV Park have no services or facilities connected to them and the site the tenant occupies has no sewer connection.

The park manager did not request a security deposit from the tenant and rent for all of the sites is calculated on a daily basis and includes GST. The park owner calculated a total amount of rent for a month's stay based on the daily rate for the tenant so that the tenant could obtain rent assistance from the ministry.

The park manager verified that as these are meant to be temporary tourist sites and mail may not be received at any the sites. The park manager stated that visiting hours are imposed by the park.

The tenant testified that as he paid his site rent by the month and has a Shelter Information application for the ministry that he does fall under the *Act*.

The tenant did not dispute information given by the park manager regarding occupying a travel trailer, that this was an RV Park, that no security deposit was required and that the sites had limited facilities.

The tenant is seeking \$2900.00 compensation based on a rate of \$100.00 per day for the RV Park having disconnected the electricity to the site when the site rent went unpaid by the tenant.

Law

Residential Tenancy Policy Guideline 9 **Tenancy Agreements and License to Occupy** speaks to:

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 Act¹. A licensee is not entitled to file an application under the Manufactured Home Park Tenancy Act.

If there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created, unless there are circumstances that suggest otherwise. For example, a park owner who allows a family member to occupy the site and pay rent, has not necessarily entered into a tenancy agreement. In order to determine whether a particular arrangement is a license or tenancy, the arbitrator will consider what the parties intended, and all of the circumstances surrounding the occupation of the premises.

- *Some of the factors that may weigh against finding a tenancy are:*
- *Payment of a security deposit is not required.*
- *The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.*
- *The occupier pays property taxes and utilities but not a fixed amount for rent.*
- *The owner, or other person allowing occupancy, retains the right to enter the site without notice.*
- *The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.*
- *The parties have agreed that the occupier may be evicted without a reason, or may vacate without notice.*

Tenancies involving travel trailers and recreational vehicles

Although the Manufactured Home Park Tenancy Act defines manufactured homes in a way that might include recreational vehicles such as travel trailers, it is up to the party making an application under the Act to show that a tenancy agreement exists. In addition to any relevant considerations above, and although no one factor is determinative, the following factors would tend to support a finding that the arrangement is a license to occupy and not a tenancy agreement:

- *The manufactured home is intended for recreational rather than residential use.*
- *The home is located in a campground or RV Park, not a Manufactured Home Park.*
- *The property on which the manufactured home is located does not meet zoning requirements for a Manufactured Home Park.*
- *The rent is calculated on a daily basis, and G.S.T. is calculated on the rent.*
- *The property owner pays utilities such as cablevision and electricity.*
- *There is no access to services and facilities usually provided in ordinary tenancies, e.g. frost-free water connections.*
- *Visiting hours are imposed.*

Analysis

Based on the documentary evidence and testimony I find that I do not have jurisdiction as a tenancy agreement does not exist between the parties. The tenant has not met the burden of proving that a tenancy agreement exists simply because the park owner provided him with a 'monthly' rent amount. The park owner based calculation of the monthly site rent off the daily site rate which includes GST, for the convenience of the tenant to allow him to apply for shelter assistance from the ministry.

The tenant occupies a travel trailer, in an RV Park not zoned for use as a Manufactured Home Park, with limited facilities, no sewer connection, no address for mail delivery, with visiting hours imposed by the park and no security deposit required by the park owner.

The tenant's application is dismissed without leave to reapply as this matter does not fall under the *Act*.

Conclusion

I hereby dismiss the tenant's application for dispute resolution, as his claim does not fall under the *Act*. The tenant has the option of pursuing his claim through the Supreme Court of British Columbia.

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 13, 2011.

Residential Tenancy Branch