



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNE, O, FF

### Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy as their employment with the landlord has ended, other and recovery of the filing fee.

The tenant participated in the conference call hearing but the landlord did not. The tenant presented evidence that the landlord was served with the application for dispute resolution and notice of hearing by registered mail RW 639 726 767 CA. I found that the landlord had been properly served with notice of the tenant's claim and the date and time of the hearing and the hearing proceeded in their absence.

### Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

### Background and Evidence

This tenancy began August, 1993 and the tenants pay a yearly pad rent of \$2360.00. There is a signed Manufactured Home Park Tenancy Agreement dated January 1, 2009.

In August 2009 the tenants were asked by the president of Illahie Beach RV Park Inc. to run the park until the lease expired on or about September 30, 2000.

In late 2008 the BC Supreme Court ruled that the Manufactured Home Park Tenancy Act did apply to this property and effective January 1, 2009, all parties signed tenancy agreements.

In September 2010 the tenants ceased being the managers of the park when the lease was terminated with Illahie Beach RV Park Inc. and Summerland Beach RV & Campground Ltd. became the landlord and park manager.

On December 30, 2010 the landlords had the tenants sign a License to Occupy Agreement.

In October 2011 the resident manager provided the tenants with a Rent Refund Notice that shows the tenants overpaid and were entitled to a rent refund of \$1890.00. The tenants requested to deduct the rent refund on the rent coming due and to pay the difference; the resident manager agreed to this.

On December 22, 2011 the tenants were sent a letter by the landlord's counsel and advised in part that: *'as past managers you are well aware that you were employees of the operator, not a tenant.'* *As employees of an RV park, you were not protected by the same laws that govern occupiers and tenants'.* *'Summerland Beach agreed to allow you the use of the campground under a licensing agreement once your employment came to an end'.*

The tenant testified that they were residents of the park prior to managing the park and that when their agreement to manage the park ceased in September 2010, they resumed their occupancy as tenants. The tenant stated that they have paid the 2011 rent to the landlord in full and recently provided the landlord with a post dated cheque for the 2012 rent.

The tenant stated that the landlord was seeking to evict them from the manufactured home park based on the License to Occupy agreement that all tenants were required to sign in December 2010. The tenant stated that previous Residential Tenancy Branch decisions had noted this License to Occupy agreement as invalid as the park fell under the jurisdiction of the Manufactured Home Park Tenancy Act. The tenant also commented that a previous 2011 Residential Tenancy Branch decision regarding jurisdiction of this property under the *Act* had been upheld by the BC Supreme Court.

### Analysis

Tenancy issues related to this manufactured home park were previously heard and ruled on by Dispute Resolution Officers under the jurisdiction of the Manufactured Home Park Tenancy Act; most recently under file 766174, January 5, 2011 and file 767831, April 6, 2011. The 2011 hearings determined that the License to Occupy Agreement that the new landlord sought to enforce was invalid as this property falls under the jurisdiction of the Manufactured Home Park Tenancy Act and this office.

BC Supreme Court decision 2002 BCSC 1707 ruled that the Manufactured Home Park Tenancy Act did apply to this RV/campground.

The manufactured Home Park Tenancy Act section 41 **Landlord's notice: end of employment with the landlord** is very clear on how a landlord may provide notice to an employee or tenant of a park.

In this case, the tenants ceased being employees in September 2010 when management of the park changed hands from Illahie Beach RV Park Inc. to Summerland Beach RV & Campground Ltd.

The tenants however, were not served notice to vacate under section 41 of the *Act* by either the previous or current landlord in relation to their former employment. When the tenants ceased managing the park in 2010 they continued to pay the yearly rent to the landlord and paid the 2011 rent in full which re-established their tenancy. It must also be taken into consideration that a tenancy existed prior to the tenants managing the park, and as previously stated, the tenancy has continued since the end of their managing of the park as the tenants continue to pay rent.

The landlord sought to rely on the License to Occupy agreement and enforce an eviction under this agreement. It has however been established in previous decisions that as this is a manufactured home park, **the License to Occupy agreement that the landlord had tenants sign is invalid and has no force or effect.**

Therefore based on the documentary evidence and undisputed testimony of the tenant, I find that there is insufficient evidence to uphold the landlord's letter that was provided to the tenants as a Notice to Vacate.

Accordingly, the December 22, 2011 'Notice to Vacate' is hereby set aside and the tenancy continues in full force and effect.

As the tenants have been successful in their application the tenants are entitled to recovery of the \$50.00 filing fee.

### Conclusion

I therefore allow the tenant's application and set aside the landlord's Notice to Vacate dated December 22, 2011 with the result that the tenancy continues uninterrupted.

The tenant may deduct \$50.00 from future rent owed to the landlord for recover of the filing fee paid to bring their application.

Dated: January 25, 2012

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Residential Tenancy Branch