



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an Application for Dispute Resolution to cancel a notice to end tenancy for cause and to recover the cost of the filing fee from the Respondents for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the parties entered into a tenancy agreement for occupation of a Manufactured Home Park pad or site?
2. If not, does this matter fall within the jurisdiction of either the *Manufactured Home Park Tenancy Act* or the *Residential Tenancy Act*?

Background and Evidence

The parties agreed that they entered into a verbal agreement whereby the Applicant agreed to rent an area enclosed by a chain link fence as of November or December 2010 for the month rent of \$325.00 plus cost of any hydro used.

The applicant affirmed that he had rented this space for his possessions and 5th wheel travel trailer which he intended to reside in. This subject area is located at the back of the locked salvage yard so he has two locked gates to go through to get to his possessions. This property is all part of a 5 acre parcel of land owned by the Respondents which has R.V. and manufactured home sites which are accessible off of a different access road than these compounds are accessed.

The Respondents affirmed they had a verbal agreement with the Applicant however it was for storage of his possessions and "casual occupation" which meant they did not mind if the Applicant resided in the 5th wheel occasionally on a short term basis. They stressed that fact that this was never intended for occupation as a permanent residence

because there is no access to sewer or septic. The noted that for the first year the Tenant was rarely there and noted that he was rarely there throughout the summer months. However, that changed sometime in the fall when he began residing there full time.

The Respondents are concerned because this area is adjacent to their salvage yard and was gated to be considered a compound yard for their business dealings with the Provincial Insurance Corporation. The confirmed that this space is not designed for residential occupation as it does not have access to septic and therefore does not meet the health regulations.

Analysis

Residential Tenancy Policy Guideline 9 entitled Tenancy Agreements and Licenses to Occupy states that it “is intended to help parties to an application understand issues that are *likely* to be relevant”. The two page document is intended to provide some general guidance to a plethora of circumstances however cannot possibly be expected to apply to all circumstances, arrangements or agreements. This guideline is accessible on the internet at <http://www.rto.gov.bc.ca>

While the guideline factors have been considered in this decision, ultimately, the Applicant must show how the arrangement they have with the Respondents is one of a tenancy pursuant to the *Act*, not the guidelines.

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 [My emphasis added].

In this case the Applicant asserts that at the time he entered into the verbal agreement the Respondents were aware of his intent to occupy his 5th wheel trailer while it was parked inside the locked compound.

As per the Respondents’ submission, the verbal contract entered into by the parties was for the purpose of storage of equipment and that the Applicant would be occupying the 5th wheel on a very casual basis and no more because there is no access to the septic system from this gated compound.

Section 1 of the Act defines a manufactured home site as “a site in a manufactured home park, which is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home.”

Notwithstanding the applicant’s assertion that they are living on a manufactured home site, I accept the Landlord’s assertion that the permission granted under their verbal agreement does not identify a site in the section of the property that has manufactured home sites rather it pertains to a storage compound that is located at the back of the salvage compound in a different area of the 5 acre property. This site is only accessible by a different road than that which is used to access the manufactured home and R.V. sites and does not have access to the septic system.

Black’s Law Dictionary, 7th Edition defines Licence as: “a revocable permission to commit some act that would otherwise be unlawful; esp., an agreement that it will be lawful for the licensee to enter the licensor’s land to do some act that would otherwise be illegal.”

Based on the aforementioned, I find the Applicant has not been granted possession of a manufactured home site and that he entered into an agreement with the Respondents for a license for use contract and not a tenancy agreement as defined under the *Act*. As licenses for use do not meet the definition of a tenancy, under the *Act*, I find the *Act* does not apply to these matters.

Conclusion

As a result of my findings above, I decline jurisdiction to resolve these disputes.

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: March 29, 2012.

Residential Tenancy Branch