



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain an Order to cancel a Notice to end tenancy issued for cause.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

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. Does this matter fall under the *Manufactured Home Park Tenancy Act*?
2. If so, has a valid 1 Month Notice to end tenancy been issued?

Background and Evidence

The Tenant submitted that he first occupied the current site in approximately May 2012 after he was able to purchase a trailer. The owner of the Park owner moved his trailer into the current site for him. He stated that he was of the opinion that his tenancy fell under the *Manufactured Home Park Tenancy Act* because he plans to occupy the site year round and he pays a monthly rent which includes hydro and cable. His trailer is located on a gravel pad and has electrical hook up and is properly hooked into the sewer/septic system.

The Landlord stated there are about 22 rental units in this park and they are of the opinion that they are all R.V. lots which do not fall under the *Manufactured Home Park Tenancy Act*. She argued that they are R.V. lots because there are no written tenancy

agreements and because it is a R.V. park with seasonal lots. She confirmed that there are several tenants who have short term or seasonal tenancies while others, like this Tenant, who resides all year round. The Tenant's current rent is payable on the first of each month in the amount of \$492.80.

When asked if HST is charged on the monthly rents the Landlord confirmed they do charge HST because they have been given mixed information about whether they are supposed to collect HST or not.

After reviewing the Tenant's evidence which included a copy of an August 12, 2012 letter telling the Tenant he was evicted, I explained to the parties that I would first make a decision about whether this tenancy fell under the *Manufactured Home Park Tenancy Act* and then I would make a decision on if this letter would constitute a proper notice to end tenancy.

Analysis

The applicant had filed an Application for Dispute Resolution and checked off that he was applying under the *Manufactured Home Park Tenancy Act (MHPTA)* however the respondent argued that the matter relates to an R.V. park and does not fall under the MHPTA, as such my determination of jurisdiction will be dictated by the *MHPTA*.

Section 2 of the *MHPTA* stipulates the Act applies to tenancy agreements, manufactured home sites and manufactured home parks. I must determine if there is a tenancy agreement or a license to occupy.

The Residential Tenancy Policy Guidelines #9 clarifies the difference between a tenancy agreement and a license to occupy. A license to occupy gives permission to the licensee to use the site or property but that permission may be revoked at any time. A tenancy agreement gives exclusive possession of the site for a term, which can include month to month arrangements.

Some of the factors that I must consider in determining jurisdiction include:

- Requirement for payment of a security deposit;
- The parties have agreed that the occupier may be evicted without a reason, or may vacate without notice;
- Was the manufactured home intended for recreational rather than residential use;

- The home is located in a campground or RV park;
- The rent is calculated on a daily basis and HST is calculated on the rent;
- There is no access to services and facilities usually provided in ordinary tenancies;
- Visiting hours are imposed.

In the absence of a written agreement between the parties I must base my findings on the verbal agreement that was described during the hearing. The *Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities.

In this case there was no requirement to pay a security deposit and there was no prior agreement that the occupier or tenant may be evicted without a reason or that the tenant may vacate without notice.

There is indication of granting exclusive possession of the site to the occupant as there are distinct boundaries to the rental site that is deemed to be his rental site. Both parties confirmed that although the Tenant’s trailer would be considered an R.V. trailer; the intent is for the Tenant to occupy the trailer year round. The Tenant’s rent is inclusive of such services such as cable television and computer Wi-Fi which are more indicative of a manufactured home park site rather than an R.V. seasonal camping site.

Although the Landlord is charging HST on monthly rents it is clear that they do not understand the application of the *Manufactured Home Park Tenancy Act* or when HST is to be collected. Furthermore, in this tenancy there is no requirement of the Tenant to provide the Landlord specific dates of their stay, a permanent address, including phone and email; and the RV licence number; as it is understood that the R.V. site is to be the Tenant’s permanent address.

There was no evidence submitted pertaining to R.V. site rules or park rules therefore I make no findings relating to which facilities are not available during the winter months.

Based on the above, I find that a tenancy does exist and therefore the *Manufactured Home Park Tenancy Act* is applicable to the issue identified in the Tenant’s application.

Upon review of the Landlord’s letter dated August 12, 2012, I find it does not meet the form and content requirements of a notice as stipulated under section 45 of the *MHPTA*. Accordingly, the Tenant’s application to cancel the Notice is upheld.

Conclusion

The Tenant's application to cancel a notice to end tenancy is UPHELD. This tenancy is in full force and effect until such time as it is ended in accordance with the *Manufactured Home Park Tenancy Act*.

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: September 17, 2012.

Residential Tenancy Branch