



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC O FF
 MNDC OLC RPP O FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed under the *Residential Tenancy Act* by the Owners and the Occupants.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other 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, respond to each other's testimony, and to provide closing remarks. 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

During the course of this proceeding the parties provided affirmed testimony confirming the terms of their agreement. The following facts were confirmed and were not in dispute.

The property in question is a multi-acre property consisting of multi-use farm land, pasture, treed areas; and the main house. Ownership of the property has changed hands between the husband and wife since the occupants moved onto the property.

In the late 1980's the property and main house were rented to a tenant who approached the Owner and requested permission to allow an Occupant move onto the property to reside in his pull trailer. The pull trailer was placed on the property, in a field, without access to permanent hook ups for water or sewer. Water is obtained through a hose hooked up to the main house and the Occupant used an outdoor latrine / outhouse for a bathroom. Gray water is being disposed of by emptying it outside on the ground. Initially there was no access to power; however sometime in approximately 2011, an electrical cable was hooked up to the main house breaker box and buried underground a distance away from the house. The electrical wire is then brought above ground to a junction box / converter where several extension cords run to various pull trailers owned by the Occupant.

The Occupant made his arrangements directly with the Tenant. The Occupant paid rent directly to the Tenant from the late 1980's to sometime in the early 1990's. When the Tenant moved out in the early 90's the Occupant began paying \$148.00 per month directly to the Owner(s) to continue his occupation of the property. The monthly fee was raised to \$200.00 when the property was transferred into the wife's name. By this time the Occupant had moved four pull trailers onto the property. An additional trailer was added sometime in the following years.

The Occupant stated that they occupy all five trailers as they live a modular type lifestyle. He explained that they use one trailer as their music studio, another as their arts and craft studio, another is used for storage, and the rest are used for regular living. He advised that in 1988 he got married and his spouse has been residing with him on the property ever since. He argued that only one trailer has above ground wiring.

The parties affirmed they had a verbal agreement to allow occupation of initially one trailer which developed into four trailers over time. There was never an agreement about defined borders of land that would be occupied and no permanent fixtures or pads were installed for permanent occupation. The Occupants never paid a security deposit; have never paid the Owners for utilities; have never contributed to property taxes; have not paid for maintenance of the property; have no sewer or septic hook ups; have electrical access to some of the trailers by extension cords running above ground; and have water access by hose hooked to the main house. The parties never discussed or agreed to specific terms about the occupation even though the Occupant(s) has resided on the property for over thirty years.

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 parties must show how the arrangement they have is one of a tenancy pursuant to either the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act*, not the guidelines.

In this case, because the pull trailers are owned by the Occupants and not the property Owners, this occupation agreement does not meet the requirements to fall under the *Residential Tenancy Act*, as applied.

Section 2 of the *Manufactured Home Park Tenancy 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 *Manufactured Home Park Tenancy 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].

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 Occupants’ submission that they are living in all of the trailers, I find that the permission granted under their verbal agreement does not identify a specific site of the property as a manufactured home site. Rather, their agreement pertains to occupation of an area of undeveloped property without proper or permanent sewage, water, or electrical services.

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 Occupants have not been granted possession of a manufactured home site and that they entered into an agreement with the Owner(s) for a license for use and not a tenancy agreement as defined under the *Manufactured Home Park Tenancy Act*. As licenses for use do not meet the definition of a tenancy, under the *Act*, I find the *Manufactured Home Park Tenancy 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: May 09, 2013

Residential Tenancy Branch