



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served by mailing, by registered mail to where the landlord carries on business. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the Residential Tenancy Act arbitrator has jurisdiction to hear this claim?
- b. Whether the applicant is entitled to the return of double the security deposit/pet deposit?
- c. Whether the applicant is entitled to recover the cost of the filing fee?

Background and Evidence

On November 16, 2012 the applicant agreed to rent a recreational vehicle. The respondent operates a campground in which there are 120 camping sites. Some of the sites have recreational vehicles on them and others are for tenting. The respondent owns and rents five RVs. The applicant rented one of the RVs.

The agreement between the parties is evidence by three documents:

- One document that states “I understand that as at temporary camper, staying on a daily basis, I have not entered into a residential tenancy agreement and am required to pay HST on my camp fee’s. It provides a section in which the applicant was to identify his permanent address.
- The applicant also signed a second document that states: TENANTS WHO EXPECT TO STAY AT THE CAMPGROUND FOR 30 DAYS OR LONGER ARE REQUESTED TO COMPLETE THIS FORM...” and “I UNDERSTAND THAT AS A TEMPORARY CAMPER, STAYING ON A DAILY BASIS, I HAVE NOT ENTERED INTO A RESIDENTIAL TENANCY AGREEMENT AND AM REQUIRED TO PAY HST ON MY CAMP FEES.”
- The applicant received a third document dealing with Damage Deposits where he initialed a section indicate no smoking.

The representative of the respondent testified as follows:

- The RV that was rented has tires and can be towed. It is insured with ICBC.
- The RV is not on foundations, does not have skirting.
- Power is obtained through an extension cord and water is obtained through a garden hose
- Revenue Canada has demanded that the landlord charge HST and now GST on the basis this is temporary camping.
- HST was charged to the tenant.
- The applicant was required to follow the rules of the park including no Christmas lights, no loud music, cannot leave garbage outside of the unit.
- Rent was charged on a daily basis although it was paid monthly.

- In the past where an occupant of one of the RV misbehaved the police were called and the occupant was thrown out of the park immediately.
- The campground is zoned commercial-industrial for the purpose of a campground.

The agent for the applicant testified the applicant responded to a newspaper advertisement advertising the rental on a monthly basis. I advised the parties that I would reserve on the issue of jurisdiction and I continued to hear evidence on the merits.

The agent for the applicant testified the applicant paid rent of \$600 per month plus a variable charge for the cost of propane. He paid a security deposit of \$300 when he moved in. The parties have not agreed in writing that the landlord can keep the security deposit. The landlord does not have a monetary order against the applicant and the landlord did not file a claim with the Residential Tenancy Branch within 15 days of the later of the end of tenancy or the date the landlord received the tenant's forwarding address in writing. The applicant vacated the rental unit on April 13, 2013. The agent testified he gave the landlord his forwarding address 3 days later. The respondent disputes this saying he did not receive the forwarding address until 60 days later. The respondent submitted the tenant smoked in the rental unit and has caused damage that exceeds the amount of the security deposit.

Analysis:

The within application was brought under the Manufactured Home Park Tenancy Act. This case does not involve the rental of a manufactured home pad. Rather it involves the rental of an RV in a campground. I determined the Manufactured Home Park Tenancy Act does not apply and the application under the Manufactured Home Park Tenancy Act should be dismissed.

The issue then arises as to whether the Residential Tenancy Act applies.

Section 2(1) of the Residential Tenancy Act provides as follows:

2 (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property

A tenancy agreement is defined in section 1 as:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Section 4 of the Residential Tenancy Act provides as follows:

What this Act does not apply to

4 This Act does not apply to

(e) living accommodation occupied as vacation or travel accommodation,

After carefully considering all of the evidence I determined the Residential Tenancy Act does not cover this situation and is excluded by section 4 of the Act for the following reasons:

- All of the documents that evidence the relationship between the parties indicate that the applicant was a temporary camper and that the Residential Tenancy Act does not apply. This is consistent with the operation of a campground. The fact the applicant has stayed several months does not affect the essence of the contractual relation between the parties.
- The documents require the applicant to provide his permanent address.
- The applicant was charged HST as required by Revenue Canada
- The property was zone commercial-industrial for use as a campground. It was not zoned for residential accommodation or a manufactured home park.

- The Rules the applicant was required to follow is not consistent with a person taking a tenancy.
- This has been operated as a campground giving temporary vacation or travel accommodation.

As a result I determined the Residential Tenancy Act does not apply to this situation. Accordingly the application is dismissed for lack of jurisdiction.

The applicant retains the right to file a claim in the Provincial Court of British Columbia to recover the security deposit. The respondent also has a right to make a claim against the tenant for damage caused.

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*, SBC 2002, c. 77.

Dated: August 14, 2013

Residential Tenancy Branch

