Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding All Fun RV Park
and [tenant name suppressed to protect privacy]
DECISION

Dispute Codes: CNC, OLC, O

Introduction
This hearing was convened in response an Application for Dispute Resolution, in which the Applicant applied to set aside a Notice to End Tenancy for Cause; for a monetary Order for money owed or compensation for damage or loss; and for "other".

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to provide relevant evidence, to ask relevant questions, and to make relevant submissions.

The Applicant stated that on May 02, 2014 or May 03, 2014 the Application for Dispute Resolution and Notice of Hearing were personally served to the Agent for the Respondent. The Agent for the Respondent stated that these documents were received on May 02, 2014.

The Applicant submitted documents to the Residential Tenancy Branch on May 05, 2014. He stated that copies of these documents were personally served to the Agent for the Respondent on May 05, 2014. The Agent for the Respondent stated that these documents, with the exception of one page that was printed by hand, was received with the Application for Dispute Resolution on May 02, 2014.

As the Respondent has received the Applicant's documents, with the exception of one printed page, those documents were accepted as evidence. The one printed page was not accepted as evidence, as the Applicant has no evidence to corroborate that it was served.

The Applicant submitted a letter to the Residential Tenancy Branch on May 21, 2014. He stated that copies of this document was personally served to the Agent for the Respondent on May 22, 2014. The Agent for the Respondent stated that this document was received on May 21, 2014, and it was accepted as evidence for these proceedings.

The Respondent submitted documents to the Residential Tenancy Branch on June 06, 2014. The Agent for the Respondent stated that copies of these documents were personally served to the Applicant on June 10, 2014. The Applicant acknowledged receipt of the documents and they were accepted as evidence for these proceedings.

Preliminary Issue to be Decided
Do I have jurisdiction over this matter?

Background and Evidence
The Applicant contends that he is occupying a site at this recreational vehicle park under the terms of a tenancy agreement and the Respondent contends that the Applicant has a license to occupy that site.

The Agent for the Respondent stated that the site was rented to the Applicant's father in 2011 and that the Applicant moved into the trailer on the site sometime in 2011, without the knowledge of the Respondent. She stated that the father left the site sometime in late 2011 or early 2012, at which time the Applicant remained on the site and paid "site fees". She stated that the Respondent has never entered into a verbal or written tenancy agreement for the site.

The Applicant stated that he always intended to stay for a long period of time, although he did not present any evidence to show that the parties discussed entering into a tenancy agreement.

The Applicant submitted a letter from the Agent for the Respondent, dated April 30, 2013, in which she declares that the site was rented to the Applicant "at a discounted daily rate". In the letter she specifically declares that the Applicant is welcome to occupy the site for "a lengthy term", but they do not enter into tenancy agreements with the occupants. The parties agree that this letter was provided to the Applicant for the purposes of obtaining government funding.

The Respondent submitted receipts that indicate the Applicant paid $500.00 per month in "site fees" for the period between April 01, 2013 and August 31, 2013 and that he paid $525.00 per month for the period between September 01, 2013 and April 30, 2014. The Applicant and Respondent agree that the rent was increased to $532.96 for the month of May of 2012 but it was subsequently reduced to $500.00. Both parties believe that this increase/decrease was related to HST/GST.

The Agent for the Respondent stated that the Applicant pays daily rent of $17.50, which includes GST. She stated that the monthly payment of $525.00 was calculated on a 30 day period and was collected as a consistent monthly amount simply because it was easier for accounting purposes. The Applicant argued that he paid monthly rent.

The Applicant submitted an unsigned notice of rent increase which indicates that rent will increase to $532.96 on May 01, 2012. The Applicant stated that this was personally served to him by the Agent for the Respondent. The Agent for the Respondent stated she did not serve the notice of rent increase to the Applicant and she does not believe the notice was served by the Respondent. She stated that it may have been intended for the Applicant's father, although the Respondent has no record of that.

The Agent for the Respondent stated that the Respondent did not collect a security deposit; that the Respondent can enter the site without notice; and that the Applicant could vacate the site without giving any notice. The Applicant did not dispute this testimony.

The Agent for the Respondent stated that, as the name implies, this is a campground that is intended for recreational use. She stated that the Respondent plays all the utility charges, except cable. She stated that the services for the site are not "frost free" and are simply located on a pole at the site, which is where the users connect their electrical cord and water hose.

The Agent for the Respondent stated that there are 65 sites; that 30-35 of the sites have been occupied for more than one month; and that approximately 15 of the sites have been occupied for more than one year. The Applicant agrees that 30-35 of the sites have been occupied for more than one month but he believes that 20-25 of the sites have been occupied for more than one year.

The Advocate for the Applicant argued that the website for the park advertises "fully" and "partially serviced" sites. The Agent for the Respondent says that the park has "full sites", which

included power, water, and sewer; “partial service” sites, which include power and water; and “unserviced” sites, which have no power or water.

The Applicant and the Respondent agree that the Respondent served the Applicant with a letter, dated April 30, 2014, in which the Applicant was advised that he must vacate the site. The parties agree that no Notice to End Tenancy was served in the format required by the *Act.*

The Advocate for the Applicant stated that there are no “visiting hours” for this complex. The Respondent did not dispute this testimony.

The Advocate for the Applicant stated that the Applicant has a community mail box, where Canada Post delivers mail to a private mail box for the Applicant.

Analysis

The *Manufactured Home Park Tenancy Act (Act)* authorizes me to settle disputes relating to tenancy agreements, but not “licenses to occupy”. Before considering the merits of this Application for Dispute Resolution, I must first consider whether I have jurisdiction over this matter.

A “license to occupy” is a living arrangement that is not a tenancy. A person occupying a site under a “license to occupy” is given permission to use a site and that permission may be revoked at any time. These types of living arrangements are not governed by the *Act.*

I find that the Applicant and the Respondent did not enter into a tenancy agreement and that the Applicant is occupying the site under a “license to occupy”. I therefore find that I do not have jurisdiction in this matter and I dismiss the Application for Dispute Resolution.

In determining that the parties did not enter into a tenancy agreement, I was influenced by the undisputed evidence that the parties did not specifically agree to enter into a tenancy agreement, although they did agree that there was an understanding the Applicant would be residing on the site for an extended period of time.

I was heavily influenced by the letter dated Respondent, dated April 30, 2013, in which the Agent for the Respondent declares that they do not enter into tenancy agreements but that the Applicant is welcome to occupy the site for “a lengthy term”. I find that this document best illustrates the intentions of the Respondent, which is that it was a lengthy “license to occupy”, rather than a tenancy agreement.

On the basis of the receipts submitted in evidence, I find that the Applicant paid monthly, not daily, rent. Clearly, rent that is paid on a daily basis is less for a month that has 30 days than a month that has 31 days. As the Applicant’s payments did not fluctuate on the basis of the number of days in a month, I cannot conclude that he paid monthly rent. This does not, in and of itself, cause me to conclude that the parties have a tenancy agreement.

Of greater importance, is what the parties understood the payment was intended for. I note that the “date in” and “date out” is completed on each receipt and each receipt notes the number of days the payment is for. This is information that is typically provided to parties who are occupying a site on a temporary or “daily” basis, and indicates the parties have not agreed to enter into a long term arrangement. This is not information that is typically provided for a periodic tenancy.

I note that there is a notation on all of the receipts submitted in evidence that declares that this is “not a tenancy agreement”. This information is handwritten on some of the receipts from 2013 and is typed on the receipt in subsequent receipts. This is a clear indication that the Respondent did not intend to enter into a tenancy agreement with the Applicant.

In determining that the parties did not enter into a tenancy agreement, I was influenced by the undisputed evidence that a security deposit was not required. The fact that the Respondent has not collected a security deposit, which the Respondent would have the right to do if this was a tenancy and which landlords typically do, supports the Respondent’s position that there is no tenancy.

In determining that the parties did not enter into a tenancy agreement, I was influenced by the undisputed evidence that the Applicant could vacate the site without providing notice. I find this strongly supports the Respondent’s position that there is no tenancy, as I find it highly unlikely that the Respondent would abandon this right that is inherent to a tenancy agreement.

In determining this matter I was influenced by the evidence that shows this site is located in a complex that is intended for use as a recreational trailer park, even though some guests stay for an extended period. This is evidenced by the manner in which services are provided to the site (on a pole to which hoses/cords are attached) and the fact those services are not “frost free”. It is also evidenced by the fact the sites are described as “fully serviced”, “partially serviced”, and “unserviced”, as these are terms that are typically used by campgrounds.

In determining this matter I have placed little weight on the undisputed evidence that there are no visiting hours in the complex, as there is no evidence to show that all campgrounds have visiting hours.

In determining this matter I have placed little weight on the undisputed evidence that the Applicant has a permanent mail box, as there is no evidence to show that Canada Post will not issue a post box to a person who is occupying a site under a license to occupy.

In determining this matter I have placed no weight on the notice of increase that was submitted in evidence by the Applicant. As the notice is unsigned and the Agent for the Respondent denies the Applicant’s allegation that she served it to him, I find there is insufficient evidence to conclude this form was created and served by the Respondent.

Conclusion

Jurisdiction in this matter has been declined.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch.

Dated: June 20, 2014

Residential Tenancy Branch