



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Alder Bay Resort
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, OLC, MNDC, FF

Introduction

This was a hearing with respect to the tenants' application for an order requiring the landlord to comply with the Act, Regulation or tenancy agreement. The tenants later amended their application to claim a monetary order. The tenants did not specify whether their application was brought under the *Residential Tenancy Act* or under the *Manufactured Home Park Tenancy Act*. I have treated the application as though it has been brought pursuant to the *Manufactured Home Park Tenancy Act*. The hearing was conducted by conference call. The tenant attended and their friend, Ms. C.N. acted as their representative and spokesperson at the hearing. The landlord's named representatives called in and participated in the hearing.

Issue(s) to be Decided

Is the tenancy governed by the provisions of the *Manufactured Home Park Tenancy Act* and if so, are the tenants entitled to any of the relief claimed?

Background and Evidence

The tenants live in their fifth wheel trailer located on the landlord's property. They moved there in 2009, according to the tenant, at the invitation of the landlord, to operate a fishing charter and perform work for the landlord. The tenants received a letter dated May 7, 2014 from the landlord. The letter stated in part as follows:

Due to several repeated violations of our campground rules and regulations, we are giving you sixty days notice to vacate your campsite. We therefore ask that you remove all possessions from the property by July 6, 2014

On May 23rd the landlord gave the tenants another letter telling the tenants to remove all their possessions within 72 hours. After they received the second letter the tenants contacted the Residential Tenancy Branch and filed an application for dispute resolution on May 26, 2014. The landlord has permitted the tenants to remain on the property pending the outcome of this hearing.

The tenant provided a copy of a handwritten document created in 2009 that he said was a copy of his tenancy agreement. It stated a monthly rate for the period from June 15th to September 15th and an “off season rate”. The document also said: “Pay for Hydro – meter read monthly”.

The tenant testified that he operates a fishing charter business from the landlord's property and he testified that he has performed work on the property for the landlord in exchange for a reduced rent. The tenants and their representative stated that they contacted the Residential Tenancy Branch after the landlord gave letters telling them they would be evicted from the property and they were told by the Residential Tenancy Branch to make an application to dispute the landlord's actions. The tenants also said they were told by the Residential Tenancy Branch that the Act applied and the landlord had to abide by the Act. The tenant said that besides himself, there are other residents who have lived at the property for two years or more. He referred to a zoning map that showed that his site is located in an area marked as residential, not as transient and said this showed that it was intended as long term accommodation.

The tenant submitted a revised copy of his application to which he added a monetary claim of \$108,780.00. He later reduced the claim to \$25,000.00 when it was rejected by the Residential Tenancy Branch because it exceeded the monetary jurisdiction under the *Manufactured Home Park Tenancy Act*.

The landlord submitted documents in reply to the tenant's application. The landlord's representatives said that the handwritten document submitted by the tenant was not an ongoing tenancy agreement. The landlord submitted copies of monthly receipts prepared by the landlord issued for camp site rental to the tenant. The landlord's position is that the arrangement with the tenants is not a residential tenancy or manufactured home park tenancy that is covered by the Act and this is not a tenancy that fall within the jurisdiction of the Residential Tenancy Branch under the *Manufactured Home Park Tenancy Act*. The landlord stated that the property is a campground and recreational vehicle park. The landlord's representative noted that the tenant has two 5th wheel vehicles, which are considered recreational vehicles, not manufactured homes. The landlord noted that the monthly receipt given to the tenant show arrival and departure dates and the campground fees charged vary with the season, the number of persons on the site and the amount of Hydro used on metered sites.

The landlord said that the so called zoning map merely shows a proposed development which the landlord has never applied for. The landlord's representative said that if the landlord applies to develop the area as a residential property development, then it must do so in accordance with the municipal by-law which only allows recreational vehicles to be sited on lots and used as residences during the normal construction period and then only for no more than two years. The landlord's representative said that the resort is a campsite, not a mobile home park, even though some site occupants stay for extended

periods. The landlord's representative also noted that the property is not equipped with permanent utility connections and frost-free water hookups.

Analysis

There is no doubt that under the *Manufactured Home Park Tenancy Act* the letters given to the tenants ordering them to vacate are of no force or effect, because they were not in the prescribed form and did not comply with other requirements of the legislation. The landlord has argued that the tenant's occupancy is excluded from the Act and does not constitute a tenancy under the *Manufactured Home Park Tenancy Act*.

The Residential Tenancy Policy Guideline with respect to Tenancy Agreements and Licences to Occupy provides in part as follows:

This Guideline clarifies the factors that distinguish a tenancy agreement from a license to occupy. The definition of "tenancy agreement" in the Residential Tenancy Act includes a license to occupy. However, the Manufactured Home Park Tenancy Act does not contain a similar provision and does not apply to an occupation of land that under the common law would be considered a license to occupy.

A license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or "licensee", is given permission to use a site or property, but that permission may be revoked at any time. Under a tenancy agreement, the tenant is given exclusive possession of the site for a term, which can include month to month. The landlord may only enter the site with the consent of the tenant, or under the limited circumstances defined by the Manufactured Home Park Tenancy Act¹. A licensee is not entitled to file an application under the Manufactured Home Park Tenancy Act. (underlining mine).

The Guideline goes on to say that:

Tenancies involving travel trailers and recreational vehicles

Although the Manufactured Home Park Tenancy Act defines manufactured homes in a way that might include recreational vehicles such as travel trailers, it is up to the party making an application under the Act to show that a tenancy agreement exists. In addition to any relevant considerations above, and although no one factor is determinative, the following factors would tend to support a finding that the arrangement is a license to occupy and not a tenancy agreement:

- The manufactured home is intended for recreational rather than residential use.

- The home is located in a campground or RV Park, not a Manufactured Home Park.
- The property on which the manufactured home is located does not meet zoning requirements for a Manufactured Home Park.
- The rent is calculated on a daily basis, and G.S.T. is calculated on the rent.
- The property owner pays utilities such as cablevision and electricity.
- There is no access to services and facilities usually provided in ordinary tenancies, e.g. frost-free water connections.
- Visiting hours are imposed.

Conclusion

Based on the evidence presented, I find that the applicants have not met the onus of proof to show that a tenancy exists. The majority of the evidence does not support a finding that there is a tenancy in place between the parties; I note in particular that the tenant's home is intended for recreational, not residential use and it is located in a campground that is not zoned as a manufactured home park. I find that the agreement between the parties constitutes a license to occupy. As set out above, the *Manufactured Home Park Tenancy Act* does not apply to licenses to occupy. The *Residential Tenancy Act* does not apply because the applicants own the trailer in which they reside. The application is therefore dismissed, for lack of jurisdiction.

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: July 16, 2014

Residential Tenancy Branch

