



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, OLC, PSF

Introduction

This hearing dealt with an application by the tenant for orders setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent and a 1 Month Notice to End Tenancy for Cause; compelling the landlord to comply with the Act, regulation or tenancy agreement; and compelling the landlord to provide service or facilities provided by law. The tenant was assisted at the hearing by an advocate; the landlord did not appear but was represented by counsel appearing on his behalf.

The only evidence file by the tenant was a copy of letter received from the landlord dated November 30, 2014. The landlord did not file any written evidence.

Prior to the hearing the landlord's lawyers filed a letter stating that he had not served the tenant with a written notice to end tenancy; that he was withdrawing the notice of rent increase he had served on the tenant; and the *Manufactured Home Park Tenancy Act* did not apply to this rental arrangement.

The tenant wanted a ruling on whether the *Manufactured Home Park Tenancy Act* applied to his tenancy and whether hydro should be included with his rent. The hearing proceeded on those issues.

Issue(s) to be Decided

- Does this *Manufactured Home Park Tenancy Act* apply to this rental arrangement?
- If so, does the agreement between the parties require the landlord to provide hydro as part of the rent?

Background and Evidence

The tenant lives in a 30 foot motor home. When he moved the motor home from one location in this park to another about a year and a half ago he had to have it towed

because the fuel pump was not working. The tenant said that if it had been working the motor home would have been drivable.

The sign on the park describes it as an RV Resort and the landlord used to advertise as a campground. There are 14 or 15 RV sites, all in a row. Each site is 10 to 15 feet apart. Each site has a concrete pad and a picnic table (provided by the landlord) beside it. The landlord, or staff hired by the landlord, does the yard maintenance in this area. The residents of the RVs have been told they cannot have sheds, decks, or other structures on the sites.

Many of the other occupants of the park rent both the RV and the pad from the landlord. All of the residents of the RVs have lived in this park for a long time.

There are also eight cabins located in this park. They are rented by the night or by the month.

The tenant is connected to hydro, cable, water and sewer. Each site has its' own meter. When the tenant first started renting in this park all these services were included in the rent. The tenant says that about two years ago the landlord started charging the residents separately for hydro. The landlord gives the resident a copy of the hydro bill and the resident pays it. The tenant's daughter, who lives in her own RV in this park, pays anything over \$50.00 for hydro. Basic cable is still included in the rent. The tenant has an Internet connection which he pays for.

One of the facilities in the park is a bathroom/laundry facility. Access to this facility is included in the rent. Most of the residents of the other RVs use the bathrooms. The tenant has a bathroom in his motor home so he does not use it. All of the cabins have their own bathrooms.

There are no visiting hours for the park.

The tenant does not pay property tax.

The landlord's lawyer advised that the property is not zoned for use as a manufactured home park.

The tenant testified that he started renting at this park about 10 years ago. He testified that at that time the monthly rent was \$190.00. He did not pay a security deposit. He testified that the only documentation at that time was a Shelter Information form from the Ministry. As of the date of the hearing the monthly rent was \$425.00.

The tenant testified that the only documentation he has from the landlord is a document entitled "Registration". It is undated but based upon the rent he thinks it was completed about two years after the start of his residency.

For the first eight years or so the tenant's motor home was not parked with the rest of the RVs but in a separate location. At this spot he had two sheds attached to the motor home; he had the motor home skirted in; and he maintained the grounds around his motor home. He moved his motor home to its' current site about 1 ½ years ago at the request of the landlord.

At one point in the past, when the tenant was still parked in the first location, the landlord asked the tenant to remove the sheds. The tenant did not agree to do so and the landlord did not insist.

The tenant's testimony was that rent is charged by the month. There is nothing in the letter served on the tenant by the landlord to indicate that GST is charged on the rent.

On cross-examination the tenant acknowledged that he had signed a document titled "Registration Form". The lawyer read a portion of the form: "Notice to Guests – This property is privately owned . . . 11:00 am is check-out time. The management reserves the right to assign or re-assign . . . as management sees fit. We operate under the Hotel Keepers Act." The form also said that "date – in" was July 1, 2004.

The tenant's advocate argued that the most important factor was that a monthly rent was charged to long term residents.

Analysis

The *Manufactured Home Park Tenancy Act* only applies to a tenancy agreement, not a licence to occupy. *Residential Tenancy Policy Guideline 9: Tenancy Agreements and Licences to Occupy* explains the applicable law and sets out some of the factors an arbitrator will consider when determining whether a particular rental arrangement is a tenancy or a licence to occupy.

Although the *Act* defines manufactured homes in a way that might include RVs it is up to the party making an application under that Act to show that a tenancy agreement exists.

In order to determine whether a particular arrangement is a licence or a tenancy the arbitrator will consider what the parties intended, and all of the circumstances surrounding the occupation of the premises. The passage of time alone will not change

the nature of the agreement from licence to tenancy. Depending on the terms of the individual rental agreement it is possible that some rental arrangements in a park are tenancy agreement while other rental arrangements in the same park are licences to occupy.

Rental agreements where the landlord rents a manufactured home and the site to the tenant on the same rental agreement are subject to the *Residential Tenancy Act*.

Some of the factors that may weigh against a tenancy are:

- The owner retains access to, or control over, portions of the site.
- The written contract suggests there was no intention the provisions of the *Manufactured Home Park Tenancy Act* would apply.
- 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 GST is calculated on the rent.
- The property owner pays utilities such as cablevision and electricity.
- Visiting hours are imposed.

In this case, the factors that weigh in favour of the rental agreement being a tenancy are that the rent is paid monthly and GST does not appear to be calculated on the rent; the tenant is now asked to pay for the hydro separately; and visiting hours are not imposed on the residents. All other factors weigh in favour of the rental agreement being a licence to occupy

The onus is on the tenant to establish, on a balance of probabilities, that the original agreement created a tenancy. One of the most important facts to be considered is, what was the nature of the agreement between the landlord and the tenant when the tenant first moved his motor home into this park.

I think the tenant was a truthful witness but he was not very clear on many points such as the start date of his residency or the date when he signed the registration form. The tenant has received documents from the landlord over the year such as the registration form and notices of rent increases – some of which he referred to in the course of his testimony – but he did not file anything. Something that showed that the rent has always been calculated on a monthly rather than a daily rate would have been helpful.

Based on the evidence before me I cannot find that the tenant has established, on a balance of probabilities, that his rental arrangement is a tenancy and therefore subject to the *Manufactured Home Park Tenancy Act*. Accordingly, the Residential Tenancy Branch has no jurisdiction over this dispute.

Conclusion

The tenant's application is dismissed for the reasons set out above.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 18, 2015

Residential Tenancy Branch

