



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, OLC, RPP, FF

Introduction

The Application for Dispute Resolution filed by the landlord submits the Residential Tenancy Branch does not have jurisdiction. Alternatively, if it does have jurisdiction the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent?
- b. A monetary order in the sum of \$2124 for unpaid rent and other fees?
- c. An order to recover the cost of the filing fee?

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$120. The applicant has applied to amend his application to claim a monetary order in the sum \$3609.90.
- b. An order that the landlord comply with the Act, regulation and/or the tenancy agreement?
- c. An order that the landlord return the tenant's personal property.
- d. An order to recover the cost of the filing fee.

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. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was served on the landlord by mailing, by registered mail to where the landlord carries on business September 24, 2015. I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was personally served on the tenant on November 4, 2015.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the Residential Tenancy Branch has jurisdiction to hear this matter?
- b. If the Residential Tenancy Branch has jurisdiction,
 - o Whether the tenant is entitled to a monetary order and if so how much?
 - o Whether the tenant is entitled to an order for the return of personal property?
 - o Whether the tenant is entitled to recover the cost of the filing fee?
- c. If the Residential Tenancy Branch has jurisdiction,

- Whether the landlord is entitled to an Order for Possession?
- Whether the landlord is entitled to a monetary order and if so how much?
- Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The tenant owns a Recreational Vehicle which he resides in.. On April 10, 2015 he agreed to rent a site from the landlord for a monthly rent of \$465. GST was added to the rent. A dispute arose between the parties. On August 17, 2015 the landlord instructed the Bailiff to remove the tenant's 1968 Datsun. The tenant was not able to pay the bailiff to have it removed from storage. The landlord threatened to instruct the bailiff to seize his RV. The tenancy ended on September 1, 2015 when the tenant left the rental property.

The landlord submits that the Residential Tenancy Branch does not have jurisdiction based on the following:

- The landlord owns a park which houses 29 Recreation Vehicle sites, 9 tenant sites and 13 manufactured home sites. The site rented by the tenant was in the Recreational Vehicle site.
- This site at issue in these proceedings is zoned for Recreational Vehicle use and is not zoned for a manufactured home.
- The Policy of the Park for extended stay guests provides that it is a daily rental and is not governed by the British Columbia Residential Tenancy Act. This is not a landlord and tenant agreement.
- The rent for extended stay guest is calculated on a discounted daily basis (the landlord charges for 28 days and give the rest of the days for free) and GST is calculated on the rent.
- The campers (or extended stay guests) do not pay property tax or security deposits. The tenants in the manufactured home section are responsible to pay property tax and security deposit.
- The park pays utilities such as cablevision and internet wi-fi as a courtesy while the tenants at the manufactured home section pay their own including all the utilities.
- Visiting hours are imposed.
- With the manufactured home tenants, there is a tenancy agreement. However, there is no contract with the RV extended stay guest other than the envelope they had to fill out.
- The landlord took over the operation of this park at the end of April. It was run this way for the last 40 years.

The tenant testified as follows;

- The agreement he had with the manager when he agreed to rent the site in April was that the rent was to be \$465 per month, he had two parking spots and he had access to use the common shower area.
- The Extended Stay guest document was not in existence when he agreed to rent the site. He has not signed it or agreed to its terms.
- The landlord purported to increase the rent by \$30 per month starting May 1, 2015. This was not what had been agreed. He paid the rent for 3 months as he was not aware of the provisions of the Manufactured Home Park Tenancy Act that prohibited this. In August he deducted \$90 from the rent (the 3 month overpayment of \$30 per month).
- A dispute arose between he and the landlord and he was not permitted to use the shower area.
- A dispute arose with regard to whether he could have a second vehicle on his site. On August 17, 2015 the bailiff seized his vehicle illegally.

- He was not able to retrieve the vehicle from the bailiff as they stated that while the cost of removal was \$120, they landlord had instructed bailiff the tenant owed the landlord over \$1500. The tenant disputes the landlord's claims. .
- The cost to get the vehicle from the bailiff has now increased to over \$3600.

Policy Guideline #9 includes the following:

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.

If there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created, unless there are circumstances that suggest otherwise. For example, a park owner who allows a family member to occupy the site and pay rent, has not necessarily entered into a tenancy agreement. In order to determine whether a particular arrangement is a license or tenancy, the arbitrator will consider what the parties intended, and all of the circumstances surrounding the occupation of the premises.

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

- Payment of a security deposit is not required.
- The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.
- The occupier pays property taxes and utilities but not a fixed amount for rent.
- The owner, or other person allowing occupancy, retains the right to enter the site without notice.
- The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.
- The parties have agreed that the occupier may be evicted without a reason, or may vacate without notice.
- The written contract suggests there was no intention that the provisions of the Manufactured Home Park Tenancy Act apply.

The arbitrator will weigh all of the factors for and against finding that a tenancy exists, even where the written contract specifies a license or tenancy agreement. It is also important to note that the passage of time alone will not change the nature of the agreement from license or tenancy.

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.

A landlord and tenant may enter into a tenancy agreement for rental of a manufactured home site upon which the tenant is entitled to bring a manufactured home. It is important to note that a binding tenancy agreement may exist even where there is no home on the site.

Analysis

After carefully considering the disputed evidence I determined the factors indicating the arrangement between the parties is that of a licence to occupy outweigh the factors indicating it is a tenancy of a manufactured home pad for the following reasons:

- The Park is divided into three sections. The site in question is in the section that was reserved for Recreational vehicles. There is another section in the Park that is reserved for manufactured homes.
- The two sections are treated differently. The manufactured home owners pay property taxes and pay a security deposit. This is not required by the occupants in the Recreational Vehicle area.
- The Municipality has zoned this section for Recreational Vehicles and the other section is zoned for manufactured homes.
- There is a formal contract for the owners of the manufactured home. There is no such formal contract with the Recreational Vehicle section.
- The discounted rent is calculated on a 28 day rate with GST added. The remaining days are not charged for.
- Visiting hours are imposed in the Recreational Vehicle area.
- The tenant submits that the landlord cannot rely on the Extended Stay policy document which states this is not a tenancy and the Residential Tenancy Act does not apply as it was not in existence when he first entered the park. While I accept this submission I determined it is clear that the policy of the landlord is different in how the tenants in the manufactured home park section are treated compared to the Recreational Vehicle section and the tenant was aware of the differences in policy..
- Little weight can be given to how the parties dealt with the shower block. The tenant was initially given access to the shower block. This is not consistent with a manufactured home section. Later, however, the landlord purported to take this right away as there is an issue with the overuse of the septic system.

After carefully weighing all of the factors I determined the relationship between the parties is a licence to occupy and that the Residential Tenancy Branch does not have jurisdiction. As a result I declined to hear the two applications. I am aware there is another hearing in which the arbitrator took jurisdiction. However, the issue of jurisdiction was not raised or argued before that arbitrator and it is not binding on me. .

Conclusion:

In conclusion I determined the relationship between the parties is not a tenancy agreement involving the rental of a manufactured home pad. Rather it is the licence to occupy a recreational vehicle site. I determined the Residential Tenancy Branch does not have 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: November 30, 2015

Residential Tenancy Branch

