



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC, O

### Introduction and Preliminary Matters

This hearing dealt with the tenants' application for dispute resolution under the *Manufactured Home Park Tenancy Act* (the "Act") seeking an order requiring the landlord to comply with the Act and for other relief under the Act, specifically their dispute of eviction notices.

The tenants, the listed landlord, who is a landlord's agent, and the owner attended the hearing and were informed that the matter of jurisdiction would be dealt with as the evidence suggested that the dispute involved a recreational vehicle park rather than a manufactured home park.

Both parties submitted evidence in this regard, as the tenants claimed that this dispute was a manufactured home matter and the landlord claimed that the matter pertained to a recreational vehicle park.

I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

I also note that the tenants, while not specifically asking for monetary compensation, did mark in the space that they wanted a monetary order for \$1000.00. I have not considered this request, as the tenants did not specifically seek monetary compensation and provided no explanation as to the reason for a monetary claim. The tenants are at liberty to make an application for any monetary issues they may wish to pursue through a properly filled application.

### Issue(s) to be Decided

Does the *Manufactured Home Park Tenancy Act* apply to this dispute and do I have jurisdiction to decide the dispute?

If so, are the tenants entitled to the relief they seek?

## Background and Evidence

The undisputed evidence confirmed that there was no written tenancy agreement.

The tenants submitted that although their home was a recreational vehicle, it was set up as a permanent fixture on the manufactured home site and that the home was skirted. The tenants submitted further that they pay a fixed monthly rent of \$420.00, since the tenancy began on July 1, 2015, not a daily rate.

The owner countered that the park was zoned for recreational vehicles only and not manufactured homes and that the tenants did not have their home skirted.

The owner stated that they do have papers showing the zoning restrictions, but confirmed it was not sent as evidence.

As to the merits of the tenants' application, the tenants disputed the landlord's separate documents served upon them, which was a 1 page "Notice of Eviction", which sought the eviction of the tenants based upon their allegations that there was cause to evict the tenants and due to unpaid rent. Into evidence, the tenants submitted copies of the Notices of Eviction.

## Analysis

In order for me to make a decision on the tenants' application, I must first decide if I have jurisdiction to decide the dispute.

Section 1 of the Act defines a "manufactured home park" as the parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located and a "manufactured home site" as a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home.

Also, a "manufactured home" is defined as a structure, whether or not ordinarily equipped with wheels that is designed, constructed or manufactured to be moved from one place to another by being towed or carried and used or intended to be used as living accommodation.

The Residential Tenancy Policy Guideline 9 addresses jurisdiction under the *Manufactured Home Park Tenancy Act* and the distinctions between tenancy agreements and licenses to occupy; it provides:

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 Act. A licensee is not entitled to file an application under the Manufactured Home Park Tenancy Act.

The guideline contains the following remarks concerning 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.

The following factors are provided in the Guideline that supports a license to occupy and not a tenancy agreement when involving travel trailers and recreational vehicles.

1. The home is intended for recreational rather than residential use;
2. The home is located in a campground or RV park, not a Manufactured Home Park;
3. The property on which the manufactured home is located does not meet the zoning requirements for a Manufactured Home Park;
4. The rent is calculated on a daily basis, and GST is calculated on the rent;
5. The property owner pays utilities such as cablevision and electricity;
6. There is no access to services and facilities usually provided in ordinary tenancies such as frost free water connections;

Upon application of the above noted guidelines, I am persuaded and I find that the dispute involves a manufactured home, that the tenants do not possess a license to occupy, and that the dispute falls under the jurisdiction of the Act. In reaching this conclusion, I find the tenants submitted sufficient evidence that they occupy their home for a residential use and that they pay monthly rent.

Although the owner stated that the park was not zoned for manufactured home use, no evidence to support this statement was submitted.

As I have determined that this dispute falls under the jurisdiction of the Act, I next address the merits of the tenants' application.

It is apparent from reading the Notices of Eviction served by the landlord to the tenants, that the landlord attempted to end the tenancy based upon section 39 of the Act, which states that if rent is unpaid on any day after the day it is due, a landlord may give notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice, and upon section 40 of the Act, which states that a landlord may end a tenancy by giving notice to end the tenancy under the listed alleged causes.

Under sections 39(2) and 40(3), the notices to end the tenancy under this section must comply with section 45 [*form and content of notice to end tenancy*].

Section 45 of the Act states that in order for a notice to end tenancy to be effective, it must, among other things, be in the approved form.

A review of the Notices of Eviction shows a free-form, 1 page document drafted by the landlord and was not on the Residential Tenancy Branch ("RTB") approved form.

Based on the above, I grant the tenants' application. The parties were advised at the hearing that the landlord may not evict the tenants based upon the landlord drafted Notices of Eviction and that the tenants do not have to vacate the manufactured home site based upon the Notices of Eviction.

When seeking to end the tenancy, I order the landlord to comply with the Act.

### Conclusion

I find the Act applies to dispute, for the reasons stated above.

I grant the tenants' application and the tenants are not required to vacate the manufactured home site.

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: January 7, 2016

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Residential Tenancy Branch

