



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Applicant for the Respondent to make repairs to the rental unit under the *Manufactured Home Park Tenancy Act* (the “Act”).

Only the Respondent appeared for the hearing and provided affirmed testimony. There was no appearance by the Respondent despite the Applicant testifying that she had served the documents for this hearing by registered mail. The Applicant provided the Canada Post tracking number into oral evidence to verify this method of service.

Jurisdictional Issues

At the start of the hearing, I asked the Applicant about how this tenancy began. The Applicant explained that she is the daughter of the Respondent and that occupancy of the Respondent’s mobile home was given to her because the mobile home the Applicant was previously renting was destroyed by the Applicant’s former Landlord due to unpaid rent.

The Applicant explained that it was an oral agreement and that no written tenancy agreement was completed. When the Applicant was asked about what amount of rent she paid, the Applicant explained that she did not pay rent and does the odd minor repair to the mobile home when it is required.

The Applicant confirmed that she can vacate the mobile home at any time without having to give the Respondent any written notice and that the Respondent (her mother) can come and visit and access the mobile home anytime she likes without too having to give any written notice.

Section 2 of the Act stipulates the Act applies to tenancy agreements, manufactured home sites and manufactured home parks. The Act does not apply to an occupation of land that under the common law would be considered a license to occupy. Therefore, I must determine if the parties have entered into a tenancy agreement under Section 2 of the Act or if this case is a license to occupy.

The Act defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a tenant and a landlord respecting possession of a manufactured home site, use of common areas and services and facilities. In order to make findings in this respect, I turn to Policy Guideline 9 to the Act. This guideline clarifies the factors that distinguish a tenancy agreement from a license to occupy. I have reproduced the guideline in part for the parties’ convenience as follows:

“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.

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.

[Reproduced as written]

I have carefully considered the undisputed testimony of the Applicant and I find that the Act does not apply in this case. I find the occupancy of the mobile home was given to the Applicant out of generosity rather than the purpose of establishing a tenancy. The Applicant pays no rent and the parties share a family relationship, both of whom do not need to give any written notice to vacate the mobile home or to enter it. Therefore, I must decline jurisdiction in this matter. The Applicants are at liberty to seek alternative legal remedies to address their dispute.

Conclusion

For the reasons set out above, I decline jurisdiction in this matter.

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 18, 2016

Residential Tenancy Branch

