



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OLC FF

Introduction

Both parties or representatives attended the hearing. I find that the landlord was served with the Application for Dispute Resolution hearing package by registered mail. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for an Order that the landlord comply with the Act and that he recover his filing fee.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord has not complied with the Act and illegally evicted him? If so, is he entitled to compensation or a rent rebate and to recover his filing fee?

Background and Evidence

The tenant and a sister of the landlord as her agent attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The tenant asserts that the tenancy commenced in September 2015, rent of his pad was \$250 per month but he sometimes was asked for more and paid it. He said the additional may have been for utilities. He said the husband of the landlord rented the space to him. There was an outside RV plug and shed which he used. In evidence are a number of receipts for \$250 stating "rent for (various months)" commencing September 2015. He said he was only asking that the landlord obey the Act and not serve illegal Notices to End Tenancy or threaten him.

In December 2015, the female landlord was taken to hospital in an emergency and while there, her husband died. On March 3, 2016, he received a letter from the landlord stating he had to move his motor home by March 10, 2016 or she would have a tow truck move it. She also said she was reporting this to the RCMP and to BC Hydro for hydro that he illegally used. He moved on March 2, 2016 but does not think it is fair that he should have had to move quickly and in the winter when it was difficult to move the motor home and especially as he had already paid rent for March 2016.

The landlord said this man was not a tenant. He asked to store some items at their home while they were on vacation and they came home to find he had parked his motor home there. The husband allowed him to stay and he paid rent but the husband died in December. His wife, the female landlord, wrote a letter for the tenant to pay rent to her agent as she was in hospital. Then she got a very large hydro bill and found out that the tenant had gone into her home with cables and wires so she wrote the letter telling the tenant to move. She offered to refund March rent but he said not to bother. She enclosed 50 photographs showing some wires entering the house and some plugs.

The tenant said the photographs showed the panel and wires installed by the husband. He said he did not do anything but plugged into the existing RV plug that the husband had installed for renters. The landlord's agent said that the landlord told her there was no big black cord before, only a small cord for family and guests to use. She said the landlord was ill, she did not terrify anyone and feels she was not treated fairly either. The tenant said he moved rather than dispute her letter for he did not want his motor home towed away. He said another agent of the landlord had inspected the property when he left and everything was fine.

In evidence are photographs, a long statement from the landlord, a letter to the tenant to remove his belongings, receipts for registered mail and rent receipts.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

.

Analysis:

Section 1 of the Act provides that a tenancy agreement may be written, express or implied respecting possession of a rental unit. This includes a licence to occupy. However, a rental unit is defined as **living accommodation** rented to a tenant. I find the weight of the evidence is that a parking place or pad was rented to the tenant and this is not living accommodation so I find the *Residential Tenancy Act* does not apply to the tenant's situation.

The *Manufactured Home Park Tenancy Act* applies to sites (pads) rented in Manufactured Home Parks but it does not include licenses to occupy. The Policy Guidelines gave guidance as to application.

Guideline 9 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 but 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*¹. 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.

I find the weight of the evidence is that the *Manufactured Home Park Tenancy Act* does not apply to the tenant's situation either. I find this pad was not part of a manufactured home park site, there was not exclusive possession, the owner retained access to the site and could enter the site without notice. No security deposit was required. I find the landlord's agent's statement credible that they do not rent the site but allowed the tenant to stay due to the husband's generosity. I find at the most, this was a license to occupy a space beside the landlord's home.

Although the tenant applied to have the landlord ordered to follow the law in the Act, I find neither Act applies to his situation so I have no jurisdiction or authority to order the landlord to comply.

Conclusion:

I dismiss the Application of the tenant in its entirety without leave to reapply as I find I have no jurisdiction in this matter. Neither the *Residential Tenancy Act* nor the *Manufactured Home Park Tenancy Act* applies to his situation. I find he is not entitled to recover filing fees for this Application as the Act does not apply.

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: April 13, 2016

Residential Tenancy Branch