



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CREEKSIDE CAMPGROUND
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, LRE, OLC

Introduction

This hearing dealt with an Application to cancel a 1 Month Notice To End Tenancy, an order to restrict entry, and an order to comply with the Manufactured Home Park Tenancy Act (the Act), regulation, or tenancy agreement. The Applicants and the Respondent participated in the teleconference hearing.

Preliminary and Procedural Matters – Jurisdiction

At the start of the hearing I identified myself to the parties. Based on evidence provided by the Applicants, in support of their application, the issue of jurisdiction was raised.

The Applicant J.K. stated that he did not come to the hearing prepared to deal with issues of jurisdiction. The Applicant J.K. stated that he believes this is a tenancy situation and that the Act applies. He stated that they moved in to the campground eight years ago. He stated that he did not submit any evidence to support his position on jurisdiction. He testified that he could provide evidence that he submitted on a previous hearing to support his position that this is a tenancy situation. The Applicant also stated that an internet search on the dispute property will show there is a manufactured home on the property which supports his position that he has a tenancy under the Act.

The Respondent stated that this is not a tenancy situation, but rather a licence to occupy situation. The respondent made the following statements:

- There is no tenancy agreement between the parties.
- The applicant did not pay a security deposit.
- The owner controls the sites and can ask occupants to change sites.
- The respondent does not pay for utilities.
- The campground has visitor hours.
- The campground is not zoned to be a manufactured home park.
- There is no requirement for an occupant to give Notice when vacating the property.

The Respondent stated that she issued the Notices to end tenancy because she was advised by the tenancy board to issue the Notices in case the situation is found to be a tenancy situation.

The Applicants provided a document titled “campground rules guide” when they submitted their Application for Dispute resolution. The “campground rules guide” includes the following information:

- Guests renting sites on a month to month basis have a licence to occupy that site for the time period paid. Rental charges are for the use of the assigned site and CSC facilities only. There is no lease and no tenancy agreement.
- CSC does not require a damage deposit.
- Non-compliance with CSC rules, the determination of which shall be at the sole discretion of CSC may result in the termination of the guests licence to occupy a site.

The Residential Tenancy Policy Guideline #9 (the Guideline) clarifies the factors that distinguish a tenancy agreement from a licence to occupy. The Guideline states:

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

The Guideline states that some of factors that may 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 Guideline also states: “*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.*”

...It is also important to note that the passage of time alone will not change the nature of the agreement from license or tenancy."

The Applicant K. J. stated that there is no written tenancy agreement between the parties and that he did not pay a security deposit. He stated that he has not submitted any evidence to support his position that this is a tenancy; however; it is the evidence of the "campground rules guide" that the Applicant provided that raised the issue. I find that the "campground rules guide" states it is a licence to occupy situation and that there is no lease and no tenancy agreement.

The Notice of a Dispute Resolution Hearing provides general information about the responsibility of parties regarding the hearing. It states that evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. I am unable to retrieve evidence from the Applicant's previous file during the hearing and I am not permitted to provide evidence for the Applicants by searching the internet for documents. I find that the Applicant has the onus to providing evidence to support the Application and I am assisted by the policy guidelines that states it is up to the party making an application under the Act to show that a tenancy agreement exists.

I find that the testimony of the Respondent and the evidence of the "campground rules guide" support that this is a licence to occupy living arrangement. I find that the passage of time alone, eight years in this case, does not change the nature of the arrangement from licence to tenancy.

The Applicant's provided insufficient evidence to establish that the living arrangement is a tenancy.

Based on the above facts, I find I do not have jurisdiction to hear this application.

Conclusion

I decline jurisdiction to hear 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 *Residential Tenancy Act*.

Dated: October 19, 2016

Residential Tenancy Branch