



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Moray Channel Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD OPT AAT RR FF

Introduction

The applicant sought several remedies under the *Residential Tenancy Act*. The applicant, the respondent and an articulated student representing the respondent participated in the teleconference hearing.

Preliminary Issue – Jurisdiction

The applicant is the owner of a houseboat which is moored at the respondent's marina. The applicant contracted with the marina in 1998 to moor his houseboat for monthly fees.

The applicant submitted that because his contract predates the current iterations of the *Residential Tenancy Act* ("RTA") and the *Manufactured Home Park Tenancy Act* ("MHPTA"), both of which were replaced in 2004. The applicant submitted that as per the *Interpretation Act*, his agreement with the respondent should be considered to be a tenancy that is subject to either the RTA or the MHPTA.

The respondent submitted that their moorage agreement with the applicant has already been examined and no jurisdiction was found, as the applicant did not have exclusive possession over the designated moorage spot. The respondent also submitted that this matter is currently before the Federal Court.

Background and Evidence

In a decision dated August 26, 2015, the arbitrator dismissed the application on the basis that the applicant had not provided sufficient evidence to support his claim. The arbitrator in that decision made no finding as to whether or not there is a tenancy to which the RTA applies.

In a decision dated November 3, 2015, the arbitrator found that the agreement between the applicant and the respondent does not come under the jurisdiction of the MHPTA “because it does not give the [applicant] exclusive possession over a defined premises.”

Analysis

I find that the issue of whether the agreement falls under the MHPTA has previously been decided and is therefore *res judicata*.

I find no merit in the applicant’s argument that because his agreement with the respondent predates the current iteration of the RTA, the previous version of the RTA should apply and I would therefore have jurisdiction to consider the application. The RTA, both before and after 2004, only applies to residential tenancies, and the applicant is the owner of the residence in question, his float home.

I note that while the RTA and the MHPTA do not specifically prevent me from determining a matter before the Federal Court, only the Supreme Court, the fact that the dispute has been determined to be a federal rather than a provincial matter further supports my finding that I do not have jurisdiction, under provincial legislation, to consider the application.

Conclusion

I decline jurisdiction to hear this matter under either the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act*.

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 28, 2016

Residential Tenancy Branch