



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNC, FF

### Introduction

This hearing was convened in response to an Application for Dispute Resolution filed by the Applicant in which she applied to set aside a Notice to End Tenancy for Cause and to recover the fee for filing this Application for Dispute Resolution.

The Applicant stated that on September 28, 2016 the Application for Dispute Resolution, the Notice of Hearing, and documents she submitted to the Residential Tenancy Branch on September 23, 2016 were sent to the Respondents, via registered mail. The Respondent #2 stated that these documents were received by the male Respondent and that they were shown to the female Respondent, who is an agent for the male Respondent. As the Respondents received the documents, they were accepted as evidence for these proceedings.

On October 04, 2016 the Respondents submitted 1 page of evidence to the Residential Tenancy Branch. The Respondent #2 stated that this document was served to the Applicant, via registered mail, although he does not recall the date of service. The Applicant acknowledged receipt of the document and it was accepted as evidence for these proceedings.

On October 19, 2016 the Applicant submitted 10 pages of evidence to the Residential Tenancy Branch. The Applicant stated that these documents were served to the Respondents, via registered mail, on October 19, 2016. The Respondent #2 acknowledged receipt of the documents and they were accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Preliminary Matter

The Applicant did not pay a fee for filing this Application for Dispute Resolution and I therefore decline to consider her application to recover that fee.

Issue(s) to be Decided

Do I have jurisdiction over this relationship and, if so, should the Notice to End Tenancy for Cause be set aside?

Background and Evidence

The Applicant and the Respondents agree that:

- the Applicant moved her fifth wheel onto the site on September 01, 2015;
- the Applicant agreed to pay rent of \$490.00 by the first day of each month;
- the Applicant pays GST on her rent of \$490.00;
- the Applicant is still occupying the site;
- there is a separate utility meter for this site;
- the Applicant is obligated to pay for 100% of the hydro consumed at her site;
- the Respondents pay the hydro bill and collect a hydro payment from the Applicant;
- there is a rule that requires guests that stay past 11:00 p.m. to register with park employees;
- the parties have not discussed whether the Respondents would need to give notice if they wished to access the site;
- the Respondents have not needed to access the site since the Applicant moved onto the site;
- the parties have not discussed whether or not the Applicant was required to give notice of her intent to vacate the site;
- the parties have not agreed on how the Respondents would notify the Applicant that she was required to vacate the site, although the Respondents contend that they have the right to require occupants to leave without notice/cause; and
- the Tenant was served with a letter, dated September 18, 2016, in which the Tenant was advised she must vacate the site by October 31, 2016.

The Applicant stated that there is at least one mobile home in the residential complex. The Respondent #2 stated that there are no mobile homes in the residential complex.

The Respondent #2 stated that the residential complex is a campground/recreational vehicle park that is zoned "outdoor recreational". The Applicant agrees that the residential complex is a campground/recreational vehicle park, although she does not know how the property is zoned.

The Applicant stated that her fifth wheel is her primary residence. The Respondent #2 does not dispute this submission.

The Respondent #2 stated that occupants are required to complete a "registration" form on a monthly basis. The Respondents did not submit a copy of this form. The Respondent #2 stated that the "registration form" is the only written agreement the parties entered into.

The Applicant stated that she does not complete a monthly registration form, although she receives a receipt each month that specifies the utilities and rent she has paid the month and

outlines some rules regarding occupancy. The Applicant did not submit a copy of this form. The Applicant stated that the "receipts" are the only written agreement she has regarding the site.

The Applicant stated that she was told that she is a "yearly" tenant. The Respondent #2 stated that although there are people who have lived in the complex for more than a year, they are considered "monthly" residents.

The Applicant stated that she paid a deposit of \$100.00 when she moved onto the site. She stated she is not entirely sure what the deposit was for but she believes it is related to her obligation to pay for hydro.

The Respondent #2 stated that a \$100.00 hydro deposit was collected from the Applicant which would be applied to any hydro expenses owed after the site was vacated.

### Analysis

I do not have authority to consider all types of relationships between parties. I only have authority consider disputes between landlords and tenants that relate to their tenancy.

In some circumstances I have authority to consider disputes related to residential premises that include a travel trailer or a recreational vehicle in a recreational vehicle park. In some circumstances I do not have authority to consider such disputes. When considering issues relating to a travel trailer or a recreational vehicle I must consider the circumstances surrounding the living arrangement and determine whether the parties have entered into a tenancy agreement.

Residential Tenancy Branch Policy Guideline #9, with which I agree, reads, in part:

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; and
- 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.

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. In addition to any relevant considerations above, and although no one factor is determinative, the following factors would tend to support a finding that the arrangement is a license to occupy and not a tenancy agreement:

- The manufactured home is intended for recreational rather than residential use;
- The home is located in a campground or RV Park, not a Manufactured Home Park;
- The property on which the manufactured home is located does not meet zoning requirements for a Manufactured Home Park.
- The rent is calculated on a daily basis, and G.S.T. is calculated on the rent.
- The property owner pays utilities such as cablevision and electricity.
- There is no access to services and facilities usually provided in ordinary tenancies, e.g. frost-free water connections.
- Visiting hours are imposed.

On the basis of the undisputed evidence I find that the Applicant has been required to pay monthly rent of \$490.00 since she moved onto the site on September 01, 2015. As no evidence has been submitted to show that the Respondent has the right to enter the site without the consent of the Applicant or in the limited circumstances defined by the *Manufactured Home Park Tenancy Act (Act)* and the Applicant has been paying monthly rent, I find that there is a presumption that a tenancy has been created.

In determining whether or not the parties entered into a tenancy for this site I considered whether or not a security deposit was paid by the Applicant. Section 17(1) of the *Act* defines a "security deposit" as money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the manufactured home park, but does not include post-dated cheques for rent, or a fee prescribed under section 89 (2) (k).

On the basis of the testimony of the Applicant and the Respondent #2 I find that the Applicant paid a \$100.00 deposit to the Landlord that was to be applied to any hydro charges still due after the Applicant vacated the site. I find that the deposit constitutes a security deposit as it is held by the Respondent to pay for utility charges the Applicant agree to pay in exchange for occupying the site. The fact that the Respondents collected a security deposit supports the presumption that a tenancy has been created.

In determining whether or not the parties entered into a tenancy for this site I considered whether or not the Respondents retained access to, or control over, portions of the site and/or whether they have the right to enter the site without notice. As there is no evidence to show that the Applicant does not have exclusive control of the site and/or that the Respondents can enter the site without notice, I find no reason to discount the presumption that a tenancy has been created.

In determining whether or not the parties entered into a tenancy for this site I considered whether or not the Respondent pays property taxes rather than a fixed amount for rent. As the evidence shows that the Applicant pays a fixed amount of rent and there is no evidence that she pays property taxes, I find no reason to discount the presumption that a tenancy has been created.

In determining whether or not the parties entered into a tenancy for this site I considered whether or not the parties have a family or other personal relationship and occupancy is given because of generosity rather than business considerations. As there is no evidence to show that the Applicant is occupying this site on the basis of anything other than a business relationship, I find no reason to discount the presumption that a tenancy has been created.

In determining whether or not the parties entered into a tenancy for this site I considered whether or not the parties agreed that the Applicant could be evicted without a reason, or can vacate the site without notice. As there is no evidence to show that the parties agreed the Applicant could vacate the site without notice or that the Respondents can require the Applicant to vacate the site without cause, I find no reason to discount the presumption that a tenancy has been created.

In determining whether or not the parties entered into a tenancy for this site I considered whether or not the parties have a written contract that suggests there was no intention that the provisions of the *Manufactured Home Park Tenancy Act* apply. As the parties do not agree that they entered into a written contract for this site and a copy of a written agreement was not submitted in evidence, I cannot rely on that contract to discount the presumption that a tenancy has been created.

In determining whether or not the parties entered into a tenancy for this site I considered whether the fifth wheel was intended for recreational, rather than residential, use. Even though a fifth wheel is typically used for recreational use I do not find that can be considered a determining factor in these circumstances, as the Applicant has been using the fifth wheel as her permanent residence for over a year. Although the fifth wheel may not be designed for residential use, it is clear that the Applicant uses it as her permanent residence.

In determining whether or not the parties entered into a tenancy for this site I considered whether the site is located in a campground or RV Park rather than a Manufactured Home Park. The undisputed testimony is that the complex is primarily intended for recreational use and is a campground/RV park. The Respondent acknowledges, however, that some people have lived

in the complex for a year or more, which I find to be consistent with the operation of a Manufactured Home Park. It is not uncommon for a residential complex to combine recreational use with permanent residences, which appears to be the case in these circumstances.

In determining whether or not the parties entered into a tenancy for this site I have insufficient evidence to determine whether the site meets the zoning requirements for a Manufactured Home Park. Although the Respondent #2 testified that the property is zoned for recreational use "outdoor recreational", there is no evidence before me that indicates whether a manufactured home falls within the local zoning bylaws.

In determining whether or not the parties entered into a tenancy for this site I considered whether the rent was calculated on a daily basis. The undisputed evidence is that the rent is calculated on a monthly basis, which is more consistent with a tenancy than a license to occupy.

In determining whether or not the parties entered into a tenancy for this site I considered whether GST is collected. The undisputed evidence is that the GST is collected, which is more consistent with a license to occupy than a tenancy.

In determining whether or not the parties entered into a tenancy for this site I considered whether the Respondent pays for hydro. The undisputed evidence is that the Applicant pays for hydro consumption, which is more consistent with a tenancy than a license to occupy.

In determining whether or not the parties entered into a tenancy for this site I did not consider whether there is access to services and facilities usually provided in ordinary tenancies, such as frost-free water connections, as that issue was not raised during the hearing.

In determining whether or not the parties entered into a tenancy for this site I considered whether visiting hours are imposed. The undisputed evidence is that guests staying past 11:00 p.m. must be registered, which is more consistent with a license to occupy than a tenancy.

When I consider this living arrangement in its entirety, I find it has characteristics that are more consistent with a tenancy than a license to occupy.

The *Act* defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities. (Emphasis added)

In determining jurisdiction I was heavily influenced by the fact that no written agreement has been submitted in evidence to establish that the parties agreed that this living arrangement was not a tenancy. Given that the parties did not explicitly agree that the arrangement was not a tenancy and the characteristics of the arrangement are more consistent with a tenancy than a license to occupy, I find that a tenancy agreement has been implied. I therefore find that I have jurisdiction over this dispute and I will consider the Application for Dispute Resolution.

Section 40 of the *Act* authorizes a landlord to end a tenancy for a variety of reasons by giving notice to end the tenancy, providing that notice complies with section 45 of the *Act*. Section 45(e) of the *Act* stipulates that to be effective a notice to end tenancy must be in the approved form when given by the landlord.

The Respondents served the Applicant with a letter, dated September 18, 2016 informing her that she was required to move. A copy of the letter was submitted in evidence. I find that this letter is not the approved form for ending a tenancy and I find it cannot be relied upon for ending the tenancy in accordance with section 40 of the *Act*.

Section 10(2) of the *Act* stipulates that deviations from an approved form that do not affect its substance and are not intended to mislead does not invalidate the form used. I find that the letter

dated September 18, 2016 significantly deviates from the form approved by the director, as it is missing important information regarding the tenant's right to dispute the notice.

As the letter of September 18, 2016 is not proper notice to end this tenancy, I grant the application to set aside this notice to end the tenancy.

### Conclusion

The application to set aside the notice to end tenancy dated September 18, 2016 is granted. This tenancy shall continue until it is ended in accordance with the *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 *Act*.

Dated: November 10, 2016

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Residential Tenancy Branch