



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, MNDC, LAT, FF, O

Introduction

This hearing dealt with an Application requesting an order of possession; to allow the Tenant access to the site; for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; and to recover the cost of the filing fee. The Applicant and the Respondent participated in the teleconference hearing. Both parties provided affirmed testimony.

Preliminary and Procedural Matters – Jurisdiction

At the start of the hearing I identified myself to the parties. Based on evidence provided within the application, and the evidence of the Respondent, the issue of jurisdiction was raised.

The Applicant provided late evidence. The Residential Tenancy Branch Rules of Procedure require that evidence be provided not less than 14 days prior to a hearing. The evidence received on November 30, 2016, consists of a 4 page written submission and photographs of the Applicant's recreational vehicle/ trailer. The Tenant's 4 page written submission and photos are late and will not be considered in this hearing. The Tenant was given an opportunity to provide affirmed testimony in the hearing.

The Applicant M. Z. testified that he believes this is a tenancy situation and that the Tenancy Act applies. He states the Respondent told him on August 9, 2016, that he has until August 16, 2016, to remove his recreation vehicle and belongings from lot 5 of the dispute address. He stated that he does not live in his recreational vehicle ("the RV") full time and that he sometimes lives in a manufactured home in Nanaimo.

The Applicant submitted that his RV has been at the campground for over 20 years. He submitted that he was planning to move into the RV on a full time basis in the near future. He submitted that the Landlord offered to allow him to live there full time. He submitted that there is no tenancy agreement but rather there is a year to year

agreement that can be revoked at any time. He submitted that some occupants have left their RV's in the park permanently, so the year to year agreements are not enforced. He submitted that he has built a roof over his RV.

The Respondent stated that this is not a tenancy situation. The Respondent stated that regardless of the Tenants intentions to move into the unit full time, there was no agreement from the Respondent to permit the Applicant to do this. The Respondent made the following statements:

- The RV units in the park can be moved, and with this in mind, it is up to the owners on what improvements they wish to make.
- The RV spots are rented seasonally on a year to year basis.
- RV owners are not permitted to stay year round.
- The campground is not zoned for residential use.
- The business website clearly states that it is a campsite.
- Occupants pay higher rent during summer months and pay a storage fee for the off season.
- Hydro and utilities are cut off during the off season.
- The owner controls the sites and can ask occupants to change sites.
- The campground has campground rules and quiet times.
- There is no requirement for an occupant to give Notice when vacating the property.
- There is no requirement for payment of a security deposit.

The Respondent provided a copy of the property assessment showing that the property is only zoned for recreation use.

The Respondent provided a copy of an email sent to the occupants of the campground that states as of October 5th the trailers on the property will be unplugged. The email states that off season storage costs \$75.00 per month, and occupants must pay \$20.00 per night if they want to come out and stay. Occupants can also pay \$300 a month for full power during the offseason.

The Respondent provided a copy of the campground rules sent to occupants in March 2015.

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 testified that there is no written tenancy agreement between the parties and that his agreement with the Respondent is seasonal. The Applicant pays varying amounts for rent depending upon the season and does not live on the site full time. I accept the Landlord's evidence that the campground is zoned for recreational use. I find that the Respondent retains control and access to the site. I find the arrangement is a licence to occupy situation and that there is no tenancy agreement.

I also take guidance from the policy guideline and find that the passage of time alone does not change the nature of the arrangement from licence to tenancy.

The Applicant's provided insufficient evidence to establish that the part time living arrangement is a tenancy. As such the Applicant is not entitled to file an application under the *Manufactured Home Park Tenancy Act*.

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 *Manufactured Home Park Tenancy Act*.

Dated: December 12, 2016

Residential Tenancy Branch