



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Creekside Campground  
and [tenant name suppressed to protect privacy]

## **REVIEW HEARING DECISION**

Dispute Codes      CNC, LRE, OLC

### Introduction

This was a review hearing with respect to the tenant's application to cancel a Notice to End Tenancy for cause and for other relief. This matter was originally heard on October 18, 2016 by conference call. In a decision dated October 18, 2016 an arbitrator determined that the *Manufactured Home Park Tenancy Act* did not apply to the tenancy relationship between the tenant and the landlord and that he did not have jurisdiction to hear the tenant's application.

The tenant applied for review consideration of the October 18 decision. In a review consideration decision dated October 31, 2016 an arbitrator allowed the tenant's application for review consideration and directed that the review be conducted by holding a new hearing with respect to the tenant's original application. The hearing was scheduled to be conducted by conference call and I was appointed to conduct the new hearing. The tenant submitted additional evidence in support of his application for review consideration. The tenant submitted additional evidence consisting of 44 pages of documents and photographs. The landlord submitted several pages of additional evidence and submissions as well as photographs in response to the tenant's application.

### Issue(s) to be Decided

Should the one month Notice to End Tenancy dated September 16, 2016 be cancelled?  
Should the landlord's right of access to the rental property be restricted?  
Should the landlord be ordered to comply with the *Act*, Regulation or tenancy agreement?

On September 9, 2016 the tenant applied to cancel a one month Notice to End Tenancy for cause and to claim other relief. There have been two previous dispute resolution proceedings with respect to this tenancy. A hearing with respect to the tenant's application was held on March 10, 2016. The tenant attended the conference call

hearing. The landlord was not represented at the hearing and did not participate. The tenant obtained an unopposed decision ordering the landlord to comply with the act and not enter the rental sit without permission. A second application by the tenants was heard on September 9, 2016. During the hearing the parties decided to withdraw a Notice to End Tenancy that was in dispute and the application brought by the tenants seeking to cancel the Notice. There was no decision on the merits and the arbitrator declared that the parties were at liberty to pursue remedies under the Act if matters were not resolved by agreement.

### Preliminary matter

In the October 18, 2016 decision that is the subject of this review application the arbitrator decided that the *Manufactured Home Park Tenancy Act* does not apply to this tenancy and he had no jurisdiction to hear the tenant's application for dispute resolution.

The tenant's application for review consideration of this decision was granted because the arbitrator determined that the tenant was taken by surprise when the landlord submitted that the application should be dismissed on the basis that the Residential Tenancy Branch does not have jurisdiction over this dispute because the *Manufactured Home Park Tenancy Act* does not apply. The tenant said he was not prepared to make submissions with respect to jurisdiction because the issue had not been raised in two previous dispute resolution proceedings. The arbitrator conducting the review found that the tenant's evidence submitted as part of his application for review consideration could be regarded as "new evidence" and he ordered that a new hearing be conducted with respect to the tenant's original application. At the new hearing the landlord's representative again submitted that the *Manufactured Home Park Tenancy Act* does not apply to this tenancy and that I do not have jurisdiction to hear the tenant's application.

The landlord's representative testified that the rental property, known as "Creekside Campground" is a campground and RV Park, not a manufactured home park to which the *Manufactured Home Park Tenancy Act* applies, for the following reasons:

- There is no lease or tenancy agreement in place; it is on a month to month basis and the published rules of the campground provide that the occupant has a licence to occupy the site for the period of the rental payment.
- No damage deposit or security deposit is required.
- The occupant does not pay for utilities
- The owner has the right to control the sites and to ask occupants to move to a different site.
- The occupant does not pay property taxes
- The campground has visiting hours
- GST is charged on all money collected.

- The campground is zoned RR2, Rural Zone 2; the zoning permits use as a campground, but a manufactured home park is not a permitted use.
- The campground is operated pursuant to a business licence that authorizes the owner to operate the business of a campground
- The occupant is not required to give any form of notice when vacating the property.

The landlord's representative testified that the landlord has 42 permanent guests at the campground; some are seniors or are disabled. All of the units in the campground have wheels attached, a trailer hitch in place for it to be towed, or in the case of a motor home, driven from the property.

The landlord's representative testified that the tenant lives in a school bus in the campground. After he drove it onto the property he removed the engine. The tenant has built walls out of tarps surrounding the school bus and he has installed an outdoor toilet, kitchen and bathtub. It is the landlord's position that the campground is not a Manufactured Home Park and the tenant has a licence to occupy only. The landlord's representative testified that if the *Manufactured Home Park Tenancy Act* is found to apply to this tenancy, there is ample cause to support the Notice to End Tenancy for cause.

The tenant testified that the site is his permanent residence. He said that the "manufactured home" is a decommissioned bluebird school bus converted into his home; it has no fuel system and no driver's seat and it could only be moved by a heavy duty tow truck with a hydraulic lift at great expense.

The tenant testified that the rental property has always been known as a "trailer park" and was formerly called a campground and trailer park. He said there is a mixture of "manufactured" and other homes and it includes a seasonal campground.

The tenant said that he pays his rent monthly, not daily; the only contract he has signed is his rent receipt. He provided copies of past receipts. He acknowledged that electricity and cablevision are included in his rent, but he does not have the necessary equipment to use the cable service. The tenant acknowledged that he did not pay a security deposit, but he pointed out that the *Manufactured Home Park Tenancy Act* prohibits a landlord from collecting a security deposit with respect to a manufactured home site tenancy so this cannot be a factor in determining whether the Act applies.

The tenant contended that the property meets the zoning requirements to be a trailer park. The tenant said that he has a frost free water connection and he denied that any visiting hours are imposed. He also submitted copies of advertisements concerning lots

for sale described as a “trailer park”. The relevance of the documents was not explained.

### Analysis

The *Manufactured Home Park Tenancy Act* provides the following definitions:

**"manufactured home"** means a structure, whether or not ordinarily equipped with wheels, that is

- (a) designed, constructed or manufactured to be moved from one place to another by being towed or carried, and
- (b) used or intended to be used as living accommodation;

**"manufactured home park"** means the parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located;

**"manufactured home site"** means a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home;

**"tenancy"** means a tenant's right to possession of a manufactured home site under a tenancy agreement;

**"tenancy agreement"** means 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;

The Residential Tenancy Policy Guideline with respect to tenancy agreements and licences to occupy notes that a licence to occupy is explicitly included with the definition of tenancy under the *Residential Tenancy Act*, but that is not the case under the *Manufactured Home Park Tenancy Act* and licences to occupy are not considered tenancies under the latter *Act*. The guideline provides that:

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<sup>1</sup>. A licensee is not entitled to file an application under the Manufactured Home Park Tenancy Act.

The policy guideline sets out some indicia for distinguishing between a tenancy agreement and licence to occupy which were referred to by the parties and discussed in their evidence set out above. The Guideline also set out policy with respect to tenancies involving travel trailers and recreational vehicles:

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.

I have reviewed all the documents and evidence submitted by the parties. There is no tenancy agreement between the parties pursuant to the *Manufactured Home Park Tenancy Act*. The tenant pays rent monthly; his rent includes electricity and cable service. In the receipts recording his payments the tenant is described as a camper and a guest of the Creekside Campground. The receipt contains provision for the guest's signature acknowledging that the guest has read and agrees: "to comply with all of the campground rules and regulations as posted in the office and/or on the grounds."

The posted rules contain provisions that guests renting sites on a month to month basis have a licence to occupy for the time period paid.

The tenant does not occupy a manufactured home on the site and he is not living in a self-contained unit; he has effectively created a camp of sorts surrounding the school bus brought onto the property, with an outdoor kitchen, toilet and bathtub surrounded by tarpaulins. The tenant is free to move without notice. His rent includes GST and the respondent pays for the utilities including electricity and cable. The rental property is known, described and operated as a campground and RV park. I accept the landlord's evidence that is not zoned and not licenced to be operated as a manufactured home park. Based on the evidence and analysis presented, I find that the applicant has a licence to occupy the rental site and does not have a tenancy agreement under the *Manufactured Home Park Tenancy Act*. As a result I find that I do not have jurisdiction to hear the tenant's application.

### Conclusion

The original decision dated October 18, 2016 is confirmed and the tenants' application is dismissed for want of jurisdiction.

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 21, 2016

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Residential Tenancy Branch