



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Timberland Motel & Campground
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FF

Introduction

This was a hearing with respect to the tenant's application for an order that the landlord comply with the Act, Regulation or tenancy agreement and for other relief. The hearing was conducted by conference call. The tenant and the other named parties called in and participated with the tenant. The landlord's representative also called in and participated in the hearing. The tenant brought this application because he received a notice from the landlord informing all tenants of the rental property that the landlord plans to close the motel and campground property and the tenant and other occupants were told that they must move before March, 2018.

The tenant has lived in his trailer in the rental property since December 2015. The tenant brought this application because it is his position that the rental property is a manufactured home park governed by the provisions of the *Manufactured Home Park Tenancy Act* and the landlord is therefore obliged to give the tenant a 12 month Notice to End Tenancy pursuant to the Act. It is the landlord's position that the rental property is a campground and the Act does not apply.

Issue(s) to be Decided

Does the tenant have a tenancy agreement to which the *Manufactured Home Park Tenancy Act* applies?

Background and Evidence

The rental property is named and described as a motel & campground. In December, 2015 the tenant moved into a fifth wheel trailer that he purchased. The tenant has relatives who have lived at the rental property in their own trailers for a number of years. The tenant's father testified at the hearing. He has lived in in a trailer on the rental property for three years and the trailer is his principal residence. The tenant testified that he bought the trailer from the landlord with the intention of making it his permanent home. The tenant and his witnesses testified that there are many long-term permanent residents in the trailer park. The tenant testified that he rents a pad from the landlord; he pays for electrical utilities, he pays rent monthly and he lives in the trailer as his

permanent residence. It is his position that his tenancy falls under the *Manufactured Home Park Tenancy Act* and if the landlord intends to end his tenancy to put the property to another use it must give him a 12 month Notice to End Tenancy and pay him the equivalent of 12 months' rent.

The landlord's representative testified that the rental property is not a manufactured home park and the Act does not apply. She referred to the landlord's business licence under which it is licenced to operate as a tourist trailer park and campsite and not as a manufactured home park. The landlord's representative submitted a copy of the campground rules and regulations as evidence. The rules provide that all RV units must maintain their identity as travel units and all tenancies are on a daily basis although rent may be paid monthly. The landlord's representative testified that the tenant and other occupants do not have written tenancy agreements; the landlord issues receipts each month for rental payments and that is the only evidence confirming permission to occupy a site in the campground. The landlord's representative submitted a copy of the zoning by law applicable to the rental property. She noted that the zoning permits use as a tourist trailer park or camp-site, but not for use as a manufactured home park.

The tenant submitted copies of Residential Tenancy Branch decisions concerning disputes where a similarly named trailer park was found to fall within the jurisdiction of the *Manufactured Home Park Tenancy Act*. The decisions relate to a different location and landlord in another remote part of the province and they have no application to the circumstances before me.

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 Act¹. 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. 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 does not include electricity, however the landlord's evidence is that the electricity bills are partially subsidized by the landlord.

The landlord's posted rules contain provisions that the property is a travel trailer park the tenants unit must maintain their units' identity as travel units. The rules provide that tenants are renting on a daily basis only. Visitors are required to check-in and tenants are not required to give notice before moving.

The tenant is living in a fifth wheel trailer, not a traditional manufactured home. The rental property is known, described and operated as a motel and campground. 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 tenant's application for an order that the landlord comply with the *Manufactured Home Park Tenancy Act* 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: February 1, 2017, 2017

Residential Tenancy Branch