



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ALL FUN RV PARK  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      DRI   CNC   MNDC

### Introduction

This hearing was convened as a result of the Applicant's Application for Dispute Resolution, received at the Residential Tenancy Branch on January 24, 2017 (the "Application"). The Applicant applied for the following relief pursuant to the *Manufactured Home Park Tenancy Act* (the "Act"):

- An order with respect to an alleged rent increase;
- An order cancelling a notice to end tenancy for cause; and
- A monetary order for money owed or compensation for damage or loss.

The Applicant attended the hearing on his own behalf. The Respondent was represented at the hearing by S.S. and D.C., its agents. All parties giving oral testimony provided a solemn affirmation.

The Applicant testified the Respondent was served with the Applicant's Application package by registered mail. On behalf of the Respondent, S.S. acknowledged receipt of approximately 38 pages on January 30, 2017. I find the Respondent was duly served with the Applicant's Application package on that date.

The Respondent also submitted documentary evidence. On behalf of the Respondent, S.S. testified it was served on the Applicant by registered mail on February 7, 2017, at the address provided on the Application. The Respondent provided tracking information to confirm the Applicant refused to accept the evidence package on February 13, 2017. The Applicant denied receiving the Respondent's evidence package. He testified that he was unaware that his post office box had been rescinded, although no documentary evidence was submitted in support of this assertion. I find the Respondent served the Applicant in accordance with the *Act*. Pursuant to sections 88 and 90 of the *Act*, I find the Applicant is deemed to have received the Respondent's evidence package on February 12, 2017.

The parties were both represented at the hearing and were prepared to proceed. Neither party raised any further issues with respect to service or receipt of the above documents. The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary Issue - Jurisdiction

On behalf of the Respondent, S.S. testified the Applicant lived at the RV park from late-2014 to April 2015. He returned in or about October 2015 and has lived there in his fifth wheel trailer ever since. There is no written tenancy agreement between the parties and the Applicant retains the right to leave at any time. Similarly, S.S. testified the Respondent has the right of access to the RV park site at any time. According to S.S., the Applicant did not pay a security deposit or a pet damage deposit.

S.S. also provided information about the RV park itself. She stated it is zoned as an RV park and not as a manufactured home park. In addition to RV sites, there are recreational opportunities on-site, such as mini-golf and go-karts, which operate seasonally.

Although the Applicant did not dispute much of the Respondent's evidence, he maintained the RV park is a manufactured home park and that the *Act* applies. He testified he pays a fixed amount of rent each month, suggesting that rent would vary each month if it was based on a daily rate. In reply, the S.S. testified that rent is calculated on a daily basis, but that the Applicant receives a discount for paying monthly. The fact that the payment is the same every month is for ease of accounting. GST is added to payments. In support, the Respondent submitted copies of receipts into evidence which confirm the addition of rent. Although blocked on some of the copies, many of them state: "This is not a tenancy agreement."

On behalf of the Respondent, S.S. submitted that I do not have jurisdiction to hear the Applicant's Application. The Respondent's written submissions refer to Policy Guideline #9, which states:

*This Guideline clarifies the factors that distinguish a tenancy agreement from a license to occupy. The definition of "tenancy agreement" in the Residential Tenancy Act includes a license to occupy. However, the Manufactured Home Park Tenancy Act does not contain a similar provision and does not apply to an occupation of land that under the common law would be considered a license to occupy.*

*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.*

...

*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.*

[Reproduced as written.]

The above factors have been carefully considered. For the following reasons, I find there is insufficient evidence before me to conclude there is a tenancy upon which to base the Applicant's claim. Accordingly, I find I do not have jurisdiction to consider the Application. Although no one factor has been determinative, I am particularly persuaded by, and find, the following:

- The Applicant resides in a fifth-wheel trailer located in an RV park;
- Water and electricity are paid by the Respondent;
- GST is charged on payments;
- Guests at the RV park are required to leave the property at 11:00 p.m.;
- The RV park includes recreational opportunities such as mini-golf and go-karts;
- The property is zoned as an RV park, not as a manufactured home park.

I decline to hear the Application for lack of jurisdiction.

#### Conclusion

I decline to hear the Application for lack 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 24, 2017

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Residential Tenancy Branch