



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes OLC, MN, FF

### Introduction

The tenants apply for a determination that their relationship with the operations of an RV Park are that of landlord and tenant under the *Manufactured Home Park Tenancy Act* (the “Act”) and not merely as licensees. They seek the anticipated cost of having to move.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Are the applicants tenants under the *Act*?

### Background and Evidence

In 2011 the applicants moved their fifth wheel recreation trailer onto the property. There is no written agreement setting out the terms of their use of the property.

The property was known as an RV park. It has twelve sites. There are no mobile homes in the conventional sense in the park.

Some occupants leave the park with their trailers in the winter. Some store their trailers on site over the winter. Three trailer owners stayed all winter last year.

The respondents recently purchased the park from the D.s who lived in a house in the park.

The park provides underground water and sewer connections as well as cable TV and a commercial garbage bin.

It is not disputed that the zoning for the area is as a seasonal use RV park. The present use may precede the zoning bylaw and may be lawfully non-conforming.

The applicants had been paying \$3000.00 per year as “rent” in advance every April 1. It’s calculated at \$385.00 for the months April to September and then \$75.00 per month for the non-use, storage months October to March.

Occupants pay extra for electricity in the winter.

There is no signage for the park nor is it advertised as an RV park on the internet. There are no facilities in the nature of play areas and the like for travelers.

The applicants have constructed a cedar deck next to the trailer and have built a shed.

The previous owners constructed a fence on the property and the tenants added to it. The fence is a short one, not surrounding the site.

The respondent Ms. G.L. testifies that she and Mr. L. purchased the property in January 2017 and plan to run it as an RV park. Mr. D. the vendor gave her no financial or other records to indicate that any occupants were tenants. She was not even given a record of who was in each site.

She has no knowledge of what agreements Mr. D. made with present occupants.

She says each site has an electrical power meter but no water meter.

### Analysis

The *Act* defines "manufactured home" as

- 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;

A fifth wheel trailer comes within that definition. But that is not conclusive of the matter.

A tenancy agreement gives the tenant an exclusive right to occupy a manufactured home site, whereas the owner of an RV park is generally considered to be granting only a license or temporary permission to occupy a site in the park.

Residential Tenancy Policy Guideline 9, "Tenancy Agreements and Licenses to Occupy" gives an explanation of the difference and guidance in determine which relationship is which. It provides:

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*<sup>1</sup>. 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.
- 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.

### **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.

Factors suggesting a licence are that the manufactured home in question was intended for recreational use. It is not located in what might be seen as a conventional manufactured home park. The water connection is by hose indicating it is intended for summer use only. The zoning question is equivocal.

Nevertheless, having regard to the fact that the park is not presented to the public as a come and go RV park, and that the applicants pay "rent" for a one year term and appear to hold exclusive possession to their site to such an extent as to be permitted a deck a shed and some fencing I find that a tenancy was created between the applicants and the D.s.

The new owners must take their title subject to that tenancy

Since it is a tenancy, the *Act* applies and the respondents, cannot evict the tenants or raise rent except in accordance with the *Act*.

### Conclusion

As the question raised by this application is a novel point and of benefit to both sides I authorize the tenants to recover half the filing fee; the amount of \$50.00 from the landlords.

The tenants will have a monetary order in that amount against the landlords.

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: April 30, 2017

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Residential Tenancy Branch