



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, DRI

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) made by the Tenants on April 3, 2017 for the cost of emergency repairs and to dispute an additional rent increase.

One of the Tenants, the current owner, and the motel manager appeared for the hearing and provided affirmed testimony. The hearing process was explained to the parties and no questions were asked of how the hearing would be conducted.

Preliminary Issues

The Tenants had made this Application on-line under the *Residential Tenancy Act*. At the start of the hearing, the Tenant confirmed that they owned the recreational vehicle (RV) they were residing in and only rented the site on the dispute property which was a motel and campground. Therefore, with the consent of both parties I amended the Tenants’ Application to bring it under the *Manufactured Home Park Tenancy Act* (the “Act”).

The Tenants had named three parties on their Application: the current Landlord owner of the motel, the previous landlord owner of the motel, and the company motel. The Tenant testified that she had only served the current owner with a copy of the on-line Application because they could not find the previous owner to serve him with notice of this hearing. Accordingly, with the consent of the Tenant, I removed the previous owner landlord from the Tenants’ Application because he had not been served. This is reflected in the style of cause appearing on the front page of this Decision.

In addition to the Tenants’ online Application, the Tenants had also completed a hand written Application which detailed a number of issues the Tenants wanted to deal with. However, the parties’ acknowledged that the only Application served to the current

owner was the Tenants' Application for emergency repairs costs and disputing an additional rent increase. Therefore, with the consent of both parties these were the only matters I dealt with in this hearing that were before me.

The current owner of the dispute property raised this issue of jurisdiction at the start of the hearing. Therefore, I turned my mind to this issue first. The motel manager testified that the current owner took over the motel and campground in December 2016 and intends for this to be a new holiday and family resort facility. As a result the motel and campground have been undergoing major renovations and remodeling since this time. The current owner submits that this is an RV resort and not a trailer park.

The Tenant testified that she took occupancy of the dispute site in July 2014 on a month to month basis and provided the previous owner with a security deposit of \$100.00 paid at the start of the tenancy. The Tenants did not sign a tenancy agreement. The Tenant stated that she owns the RV and that it is their permanent home and their fixed place of abode. The Tenant testified that she paid the previous owner rent in the amount of \$472.50 which was inclusive of tax. The rent was paid on a monthly basis on the first day of each month and includes all utilities. The Tenant confirmed that she has access to electricity and water on the dispute site for the RV.

The Tenant confirmed that they continued to pay monthly rent to the previous owner since July 2014 until such time the current owner took over who then started to demand that the Tenants pay seasonal rent on a daily basis. The Tenant said she has rent receipts for the rent she paid on a monthly basis and a receipt for the security deposit. The Tenant confirmed that she had no restrictions on guests visiting her when the tenancy started and no person can enter the site or the RV without notice.

The motel manager did not dispute the Tenant's testimony with respect to the tenancy between the Tenants and the previous owner. The motel manager stated that they were looking for clarification on this matter in this hearing.

Section 2 of the Act stipulates that the Act applies to tenancy agreements, manufactured home sites and manufactured home parks. The Act does not apply to an occupation of land that under the common law would be considered a license to occupy. Therefore, I must determine if the Tenant and the previous owner have entered into a tenancy agreement under Section 2 of the Act or if this case is a license to occupy. The Act defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a tenant and a landlord respecting possession of a manufactured home site, use of common areas and services and facilities.

Policy Guideline 9 to the Act clarifies the factors that distinguish a tenancy agreement from a license to occupy. The guidelines states in part:

“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.

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.”*

[Reproduced as written]

I have carefully considered the evidence provided by both parties in relation to the issue of jurisdiction and make my findings based on the above guideline and provisions of the Act. In making my findings, I must focus on the agreement between the Tenants the previous owner in July 2014 which was when the occupancy started.

In this respect, I am satisfied that the previous owner and the Tenants entered into an oral tenancy agreement for rental of a site on the on the dispute property. I make this finding on the basis that the Tenants paid a security deposit to the previous owner (although one is not required to be paid for tenancies falling under the Act) which is indicative of this being a long term tenancy.

I find the fact that the Tenants also paid a fixed amount of rent to the Landlord on a monthly basis rather than a daily amount which fluctuated supports a finding that a tenancy had been established between those parties in July 2014. The Landlords provided insufficient evidence to support their case that the Act does not have jurisdiction. In addition, I find a change in ownership of the motel business and that the

current owner's plans to remodel and operate a different style of business do not change the legality of the Tenants' tenancy they entered into in July 2014.

With respect to the Tenant's issues elected on the Application, the parties agreed to move forward with the dispute on the following basis of their own accord.

The parties agreed that the Tenants' rent for this tenancy is currently payable in the amount of \$472.50 on the first day of each month. The Landlords had no objections to paying the Tenants' monetary claim of \$44.54. However, the Tenant requested that this amount be offset against rental arrears she owed of \$425.00. Therefore, the balance outstanding payable to the Landlords by the Tenants is \$380.46. The Tenant agreed in this hearing to pay this amount to the Landlords forthwith. If the Tenants fail to do so, the Landlords may issue the Tenants with a notice to end tenancy for unpaid rent.

As the above agreement deals with all of the issues elected on the Tenant's Application before me, there were no further legal findings for me to make on the Tenants' Application which has been resolved by mutual agreement. The Tenant's Application is therefore dismissed.

However, the Landlords had submitted into evidence allegations that the Tenants had breached the rules and regulations of the dispute property. In this respect, I allowed the parties to have a discussion regarding these matters. While the parties were able to reach consensus on some of the issues, not all of the issues were able to be resolved between the parties in the hearing. Accordingly, I pointed both parties to remedies available to them under the Act to deal with these issues but encourage the parties to resolve these matters between them outside of the dispute resolution process. This file is now closed.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 10, 2017

Residential Tenancy Branch