Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF, OLC

Introduction

This hearing convened as a result of an Application for Dispute Resolution filed October 17, 2017 whereby the Applicant sought an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, an Order that the Landlord comply with the *Manufactured Home Park Tenancy Act,* the *Residential Tenancy Regulation,* or the tenancy agreement and recovery of the filing fee.

The hearing was set by teleconference at 10:30 a.m. The Applicant called into the hearing, as did the lawyer for the owner of the RV Park.

Preliminary Matters

Naming of the Respondent

The Applicant confirmed that he named as Landlord, E.B.S., as they were named on the letter giving him notice to end his tenancy. Counsel for the owner of the RV Park confirmed the owners of the park are the proper respondent. Pursuant to section 57 (3)(c) of the *Act,* and *Rule 4.2* of the *Residential Tenancy Branch Rules of Procedure,* I amend the Application to name the property owner as the Respondent.

Jurisdiction

Counsel submitted that the *Manufactured Home Park Tenancy Act* does not apply to the dispute in question.

The power and authority of the Residential Tenancy Branch is derived from the enabling statutes: namely, the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*. The dispute resolution process does not create a court and as such, Arbitrators delegated under the *Act,* do not have inherent powers arising under the common law which are possessed by a judge. An Arbitrator at the Residential Tenancy Branch may only consider applications which fall under the jurisdiction of the *Residential Tenancy Act* and the *Manufactured Home Park*

Tenancy Act. As counsel for the Respondent raised jurisdiction as an issue, it was necessary that I make a finding in this regard before considering the merits of the Application filed October 17, 2017.

Preliminary Issues to be Decided

1. Does the Residential Tenancy Branch have jurisdiction to consider the Application?

Background and Evidence

The Applicant testified that he lives in a 31 foot recreational vehicle located on site #7 in an RV park owned by the Respondent. He confirmed there are no manufactured homes at the park, only recreational vehicles. The Applicant confirmed that he moved into the RV park eight years ago. There is no written tenancy agreement and the Applicant does not remember if he paid a security deposit or not.

The Applicant confirmed that when he first moved into the park he received a copy of the *Rules and Regulations* of the RV Park but he did not retain a copy. He stated that originally, there were no restrictions with respect to access to the park, but currently there are hours that it is closed. He also stated that he is allowed one small pet.

The Applicant pays $842.00 per month, which he says was raised on January 1, 2018 from $632.00 per month. The Applicant confirmed that he pays on a monthly basis, not a daily basis, although the park managers offer a daily, weekly and monthly rate.

The Applicant confirmed that his water and sewer are provided on site and that he receives electricity as a term of his tenancy. The Applicant pays his own cable television, although he stated that basic cable is provided as a term of his tenancy.

The Applicant testified that the sites are private individual numbered spaces and that there is a definite boundary around his site, which he described as a 7-8 foot high hedge. Despite these boundaries, the Applicant confirmed that the property owners and park staff are allowed to enter the site whenever they wish to do maintenance. The Applicant also confirmed that one of the park rules is that he is not allowed to build at all on the site, and is not allowed to put up a clothes line.

The Applicant submitted that his tenancy was governed by the *Manufactured Home Park Tenancy Act*. He stated that he believes the recent rent increase is illegal and that the Landlord did not use the proper form when raising his rent or issuing the notice.

Counsel for the Property Owner submitted that this is a license to occupy, not a tenancy under the *Manufactured Home Park Tenancy Act.* Counsel submitted that rent is payable weekly or monthly and that G.S.T. is collected. He also noted that the property owner's staff are able to

access the site at any time. He further noted that rental rates are subject to change according to season and that the park does not meet zoning requirements for a manufactured home park.

Analysis

After consideration of the evidence and testimony before me and on a balance of probabilities I find as follows.

I find that the arrangement between the Applicant and the Respondent is a license to occupy rather than a tenancy.

Residential Tenancy Branch Policy Guideline 9—Tenancy Agreements and Licenses to Occupy provides in part as follows:

> "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.
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> 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[1]. A licensee is not entitled to file an application under the Manufactured Home Park Tenancy Act.
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> …
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> **Tenancies involving travel trailers and recreational vehicles**
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> 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:
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> - 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.

As noted above, the Applicant bears the burden of proving this is a tenancy. I find that he has failed to meet this burden.

The Applicant conceded that the property owner, and the park staff, retain access to and control over the site upon which the recreational vehicle is located. The Applicant confirmed that the owners' staff may enter the site at any time without notice and that he I not permitted to build on the site at all. In all the circumstances I find that the Applicant does not have exclusive possession of the site.

I accept Counsel for the park owner's submissions that the site does not comply with zoning requirements for a manufactured home site. The Applicant did not dispute this claim.

The parties agreed that visiting hours are imposed. The Applicant was not able to provide copies of the original Park Rules, which he claimed to have received when he moved in. He conceded that visiting hours are now imposed but stated that this was not always the case; however, he did not provide any supporting evidence in this regard.

Further, although the Applicant pays his on a monthly basis the documentary evidence suggests the amount payable is calculated daily and G.S.T. is calculated on the rent.

Conclusion

The agreement between the Applicant and the park owner does not fall under the jurisdiction of the *Manufactured Home Park Tenancy Act,* and as such I have no jurisdiction to consider the claims. The Application is therefore dismissed.

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

Dated: January 26, 2018

Residential Tenancy Branch