



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT CNC OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (1 Month Notice) pursuant to section 40;
- an order to the landlord to provide services or facilities required by law pursuant to section 58; and
- authorization to recover the filing fee for this application, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 81 and 82 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence. The landlord did not submit any written evidence for this hearing.

The tenant confirmed receipt of the 2 Month Notice to End Tenancy for Unpaid Rent (the 2 Month Notice) dated October 26, 2017, with an effective date of December 31, 2017. Accordingly, I find that the 2 Month Notice was served to the tenant in accordance with section 81 of the *Act*.

Preliminary Issue-Jurisdiction

At the beginning of the hearing the respondent in this application stated that this matter does not fall under the jurisdiction of the Residential Tenancy Branch as the landlord testified the tenant resides in a recreational vehicle ("RV") parked on his property, which is farmland. The landlord testified that this is not a tenancy under the MHPTA.

There is no written tenancy agreement between both parties, but there is an oral agreement for the tenant to pay \$225.00 per month to the landlord in exchange to park her RV on the property. The tenant testified that she resides in her RV, and this matter falls under the MHPTA.

The definitions of “manufactured home”, “manufactured home park”, “manufactured home site”, and “tenancy agreement” are outlined in the following terms in section 1 of the *Act*.

"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 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.

What this Act applies to

- 2** (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, manufactured home sites and manufactured home parks.

Both parties gave evidence that there was an oral agreement for the applicant to park her RV on the respondent's property in exchange for a monthly payment of \$225.00. Although no signed agreement exists, and no security deposit was ever paid, both parties entered into an agreement pertaining to the applicant's right to park and reside in her RV on the respondent's property in exchange for money. The respondent referred to this property as farmland, which he believes does not fall under the MHPTA.

RTB Policy Guideline 27(b) addresses statutory jurisdiction, specifically “does the statute confer upon the RTB the statutory authority to hear the dispute between the parties or to make the requested order?” 27(b)(1) discusses excluded jurisdiction, which states the following:

c. Travel Trailers and Recreational Vehicles

If the residential premises consist of a travel trailer or a recreational vehicle in a recreational vehicle park, the agreement between the parties may well be included in the Residential Tenancy Act if they meet the requirements of section 2. Each case will turn on its particular circumstances and it is possible that the relationship is not a tenancy and not included in the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (see Guideline 9).

I have considered section 2 of the *MHPTA* as well as Policy Guideline 27 in making my decision in regards to jurisdiction. As the applicant utilizes the RV as permanent living accommodation, and it is designed to be moved from one place to another, I find that the RV meets the definition of a Manufactured Home under the *MHPTA*. As it is undisputed that a monthly payment was made in exchange for the ability to park this RV on a designated portion of the respondent’s land, I find that the property, although farmland, falls under the definition of a Manufactured Home Park under the *MHPTA*. A tenancy agreement may be oral, or even implied, and does not require a security deposit to be valid. I find that an oral agreement was entered by both parties. Based on the evidence before me, I find that the relationship between both parties is a tenancy, and this dispute falls within the jurisdiction of the *MHPTA*.

Issues

Should the landlord’s 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the cost of the filing fee from the landlord for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

The tenant entered into an agreement to park and live in her RV on the landlord's property since March of 2016. The agreement was oral, and the monthly site rental was set at \$225.00, due on the first of every month.

On October 26, 2017, the tenant received a 2 Month Notice to End Tenancy for Landlord's Own Use under section 49 of the Residential Tenancy Act ('RTA'). The effective date of that 2 Month Notice is December 31, 2017. A copy of the 2 Month Notice was submitted in the tenant's evidence. The tenant noted that the 2 Month Notice was incomplete as the form is missing her last name. The tenant also noted that the 2 Month Notice under section 49 of the RTA is not the correct form as this tenancy falls under the MHPTA, and the landlord failed to issue her the proper notice under section 42 of the MHPTA, and which requires 12 months' notice.

The landlord testified that he had sold the property, and the new owner will be taking possession on January 31, 2018. The new landlord wished to move onto the property, and end the tenancy.

Analysis

Section 45 of the *Act* provides the following requirements requiring the form and content of notices to end tenancy:

45 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the manufactured home site,
- (c) state the effective date of the notice,
- (d) except for a notice under section 38 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Section 37(1) of the *Act* states that a tenancy under the MHPTA may end only if one or more the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 38 [*tenant's notice*];
- (ii) section 39 [*landlord's notice: non-payment of rent*];
- (iii) section 40 [*landlord's notice: cause*];
- (iv) section 41 [*landlord's notice: end of employment*];
- (v) section 42 [*landlord's notice: landlord's use of property*];
- (vi) section 43 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 89 (2) (a.1), requires the tenant to vacate the manufactured home site at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates the manufactured home site or abandons a manufactured home on the site;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

The landlord issued the tenant a notice under section 49 of the RTA. The landlord is required to issue a notice under section 42 of the MHPTA for landlord's own use of property, and requires 12 Months' Notice, and not 2 months. The 2 Month Notice dated October 26, 2017 does not comply with section 45(e) of the *Act* as the notice is not in the approved form. As this tenancy falls under the jurisdiction of the MHPTA, and not the RTA, the landlord failed to give notice on the correct form required by the MHPTA. This notice to end tenancy is therefore invalid, and accordingly I allow the tenant's application to cancel the landlord's notice to end this tenancy dated October 26, 2017. The tenancy is to continue as per the *Act*, regulation, and oral agreement.

As the tenant was successful in her application, I find that she is entitled to recover the filing fee for her application.

Conclusion

I allow the tenant's application to cancel the 2 Month Notice dated October 26, 2017. I order that this tenancy continue until ended in accordance with the *Act* and regulation.

I issue a \$100.00 Monetary Order in favour of the tenant for recovery of the filing fee. I allow the tenant the above monetary award by reducing future monthly rent payments until the amount is recovered in full. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord(s) must be served with **this Order** as soon as possible.

Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: January 17, 2018

Residential Tenancy Branch