



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC

Introduction

This teleconference hearing was scheduled in response to an application under the *Residential Tenancy Act* (the “*Act*”) to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”), and an Order for the respondent to comply with the *Act*, *Residential Tenancy Regulation* (the “*Regulation*”), or tenancy agreement.

The respondent and a family member were present for the teleconference hearing, as was the applicant, a support worker, and a legal advocate.

The respondent confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the applicant’s evidence. The applicant confirmed receipt of the respondent’s evidence package. As such, I find that both parties were duly served in accordance with Sections 88 and 89 of the *Act*.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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

Issues to be Decided

Should the Two Month Notice to End Tenancy for Landlord’s Use of Property be cancelled?

If the Two Month Notice to End Tenancy for Landlord's Use of Property is upheld, should an Order of Possession be granted?

Should the respondent be ordered to comply with the *Act, Regulation*, or tenancy agreement?

Background and Evidence

The parties were in agreement that the applicant moved onto the respondent's property on November 1, 2014. She currently pays \$200.00 per month, with no security deposit paid. There was no written tenancy agreement as the arrangements were made verbally. The parties confirmed that the applicant has her own motorhome and that the property where the motorhome is placed belongs to the respondent.

The applicant stated that the monthly amount was increased to the current amount of \$200.00 approximately one year after moving in due to cable being provided by the respondent.

The applicant provided testimony that she obtains electricity to her motorhome through a connection to another building on the property. She stated that although she previously had a water supply, she currently does not and instead brings water into the motorhome with buckets.

The respondent stated that the applicant had water for four years, but when the pipe broke, the applicant did not fix it. She further stated that she provides electricity to the motorhome.

On September 25, 2018, the applicant was served in person with a Two Month Notice under the *Residential Tenancy Act*. The Two Month Notice was submitted into evidence and states the following as the reason for ending the tenancy:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child; or the parent or child of that individual's spouse)

The effective end of tenancy date of the Two Month Notice was stated as December 15, 2018.

The parties were not in agreement as to whether this matter falls under the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act*. The applicant applied for an Order for the respondent to comply. Through this claim, she asked that this matter be considered under Section 42 of the *Manufactured Home Park Tenancy Act* in which 12 months would be provided to move.

The respondent testified as to her belief that this is not a manufactured home park. She stated that the applicant's motorhome is not a manufactured home and that her property is not classified as a manufactured home park. The respondent submitted into evidence a statement in which she outlines why she believes this matter does not fall under the *Manufactured Home Park Tenancy Act*. In the statement, the respondent confirms that electricity, water and cable is included in the monthly fee of \$200.00.

The applicant submitted a photo into evidence of the sticker on her motorhome and testified that this demonstrates that her motorhome has the relevant CSA approval. The applicant also submitted multiple recordings of conversations and voicemails between herself and the respondent, and receipts showing work completed on the property around her motorhome.

The applicant submitted into evidence photos of the area around her motorhome, including storage shelving. She also submitted an estimate of the costs of moving, as she is not sure her motorhome would be able to be moved easily.

Analysis

In order to determine if this matter falls under the *Residential Tenancy Act*, I refer to Section 2 of the *Act*. This section states that the *Act* is regarding tenancy agreements, rental units and other residential property. Section 1 of the *Act* provides a definition of 'residential property' as the following:

- (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
- (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
- (c) the rental unit and common areas, and
- (d) any other structure located on the parcel or parcels;

'Rental unit' is defined as follows:

"rental unit" means living accommodation rented or intended to be rented to a tenant;

As the parties were in agreement that the applicant owns her own living accommodation, I find that the verbal agreement is regarding the land in which the motorhome is parked, not a rental unit or residential property. Therefore, I find that the *Residential Tenancy Act* does not apply to this matter.

I am not able to make a decision regarding the Two Month Notice as I decline jurisdiction under the *Residential Tenancy Act*.

The applicant has claimed that the respondent should comply with the *Manufactured Home Park Tenancy Act*. I note that in accordance with the *Residential Tenancy Branch Rules of Procedure*, the onus is a dispute resolution proceeding is on the party making the claim.

While the applicant submitted a photo of the sticker on her motorhome and testified as to her belief that the agreement she has with the respondent falls under the *Manufactured Home Park Tenancy Act*, I do not find sufficient evidence before me to establish that this is the case.

I refer to *Residential Tenancy Policy Guideline 9: Tenancy Agreements and Licenses to Occupy*, which states the following:

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.

Policy Guideline 9 further outlines additional factors that may lead to the finding that an agreement does not fall under the *Manufactured Home Park Tenancy Act*. This includes that the home is intended for recreational use instead of residential, that the property where the home is located does not meet the zoning requirements for a manufactured home park, and that the landlord pays utilities such as cable and electricity.

Based on the testimony of both parties, I find evidence that the respondent may pay cable and electricity and that the motorhome may be intended for recreational use.

Further to this, I find insufficient evidence from the applicant to demonstrate that the respondent's property meets the zoning requirements for a manufactured home park. I note that in accordance with rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party who is making the claim.

As such, I find insufficient evidence for me to be satisfied that this matter falls under the *Manufactured Home Park Tenancy Act* and decline to issue any orders relating to this act.

Therefore, I find that this is not a tenancy under the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act*, and I decline jurisdiction.

Conclusion

I decline jurisdiction under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*.

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: November 20, 2018

Residential Tenancy Branch