



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, RPP, FF

Introduction

This hearing was convened as a result of an Application for Dispute Resolution, made on November 16, 2018 (the “Application”). The Applicants are seeking the following relief, pursuant to the *Manufactured Home Park Tenancy Act* (the “Act”):

- an order that the Respondent return all or part of the security deposit and/or pet damage deposit.
- an order that the Respondent return the Applicant’s personal property; and
- an order granting recovery of the filing fee.

The Applicants attended the hearing on this date. No one attend for the Respondent. All in attendance provided affirmed testimony.

The Applicants testified the Application, Notice of Hearing, and documentary evidence package was served on the Respondent by registered mail on November 23, 2018. A copy of Canada Post registered mail receipt was submitted in support. Based on the oral and written submissions of the Applicants and in accordance with sections 89 and 90 of the *Act*, I find that the Respondent is deemed to have been served with the Application and documentary evidence on November 28, 2018, the fifth day after their registered mailing.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters – Jurisdiction

At the start of the Hearing, the Applicants described their living situation in relation to the Application. They indicated that their tenancy began on July 3, 2018. The arrangement was that the applicants would be permitted to move their Recreational Vehicle onto the Respondent's personal property for one year in exchange for \$4,000.00. The Applicants testified that there was no written agreement between the parties and there was no security deposit paid to the Respondent.

The Applicants stated that it was their understanding that services such as water and electricity would be made available at some time, however, this never happened. As a result, the Applicants decided to vacate the lot on September 4, 2018. They are seeking the return of the rent paid to the Respondent in the amount of \$4,000.00

I find this is not a tenancy situation, but rather a licence to occupy situation. The Applicants made the following statements:

- There is no tenancy agreement between the parties.
- The Respondent controls the site and can ask occupants to change sites.
- The Applicant does not have utilities.
- The property is not zoned to be a manufactured home park.

The Residential Tenancy Policy Guideline #9 (the Guideline) clarifies the factors that distinguish a tenancy agreement from a licence to occupy. The Guideline states:

A licence 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. A licensee is not entitled to file an application under the Manufactured Home Park Tenancy Act.

The Guideline also states: *"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.

The Applicants stated that there is no written tenancy agreement between the parties and that they did not pay a security deposit, however, I note that a landlord must not require or accept a security deposit in respect of a manufactured home site tenancy pursuant to section 17 (2) of the Act. They also stated that they do not have access to services and facilities usually provided in ordinary Manufactured Home Park Tenancies such as water and electricity as well as the Respondent retains access to, or control over, portions of the site. Further to this, the recreational vehicle appears to have been parked on the Respondent's personal property, and there is no documentary or other evidence before me for consideration that this location is either in Manufactured Home Park or meets the zoning requirements for a Manufactured Home Park. I find that the Applicants have the onus to provide evidence to support the Application pursuant to rule 6.6 of the Rules of Procedure and I am assisted by the policy guidelines that states it is up to the party making an application under the Act to show that a tenancy agreement exists.

I find that the testimony of the Applicants support that this is a licence to occupy living arrangement rather than a tenancy under the Manufactured Home Park Tenancy Act.

Based on the above facts, I find I do not have jurisdiction to hear this application and the Application is dismissed without leave to reapply. I encourage the parties to seek independent legal advice in relation to this matter.

Conclusion

The Application is dismissed without leave to reapply for lack of jurisdiction.

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 07, 2019

Residential Tenancy Branch