



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Applicant N.D.: CNC, DRI, MNDCT, MNRT, OLC, PSF, RR
Applicant D.M.: FFL, MNRL-S, OPC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Parties under the *Residential Tenancy Act* ("Act").

The Applicant, N.D., applied:

- For an order cancelling a One Month Notice to End Tenancy for Cause ("One Month Notice");
- To dispute a rent increase that is above the amount allowed by law;
- For the Applicant, D.M., to comply with the Act, regulation, and/or tenancy agreement;
- For the Applicant, D.M., to provide services or facilities required by the tenancy agreement or law;
- To reduce the rent for repairs, services or facilities agreed on, but not provided;
- For compensation for monetary loss or other money owed; and
- To be paid back for the cost of emergency repairs that he made during the tenancy.

The Applicant D.M. applied:

- To recover the money for unpaid rent – holding security or pet deposit;
- An order of possession for the One Month Notice served on the Applicant, N.D.; and
- For recovery of the filing fee for this application.

Only the Applicant, N.D., appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in documentary form.

As both Parties filed applications and these were scheduled to be heard at the same time, service of the applications and Notice of Hearing is not in issue.

I 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.

Preliminary and Procedural Matters

The Parties provided their email addresses in their applications and the Applicant, N.D., confirmed his understanding that the decision would be emailed to both Parties and any orders sent to the appropriate Party.

In the hearing, the Applicant, N.D., advised me that he is living in a “tiny home” that was on the Applicant, D.M.’s, property and that the Applicant, N.D., owns the tiny home. The Applicant, N.D., said that there are other tenants in another trailer and in the basement suite of the house on the property, but that it is not a manufactured home park. The Applicant, N.D., said that he vacated the property approximately two weeks prior to the hearing, so he is no longer seeking to cancel the One Month Notice.

The Applicant, N.D., submitted a letter dated April 9, 2019, from the local District office to the Applicant, D.M., saying that the Applicant, D.M., is breaching a zoning bylaw by having “recreational vehicles” on his property as a residence.

The Applicant, N.D., said that his tiny home used to be a recreational vehicle, but that he and the Applicant, D.M., renovated it into a “tiny home” and it is no longer a recreational vehicle.

The Applicant, N.D., said that he has lived there for about 2½ years, but that he and the Applicant, D.M., do not have a written tenancy agreement. He said he has paid the Applicant, D.M., \$400.00 to \$500.00 in cash per month for the use of the space on the property.

Given the above, the first matter for me to determine is whether I have jurisdiction to decide this matter.

Section 1 of the Act defines the following terms:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

"rental unit" means living accommodation rented or intended to be rented to a Tenant.

As the residence in question is owned by the Applicant, N.D., I find it is not a "rental unit" and that the agreement between the Parties does not fall under the *Residential Tenancy Act*.

Section 1 of the *Manufactured Home Park Tenancy Act* ("MHPTA") defines the following:

"tenancy" means a tenant's right to possession of a manufactured home site under a tenancy agreement;

"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;

"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;

"manufactured home" means a structure, other than a float home, 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;

Further, section 13 of the MHPTA states that a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

Policy Guideline #9 states:

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.

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. . . .

In this case, the Applicant, N.D., owns the housing unit in which he lives and I find that he pays an undetermined amount to the property owner to park his tiny home on the property, and the Applicant, D.M., may be breaching local bylaws by having people live on his property in different capacities. Based on the statutes and these factors, and on a balance of probabilities, I find that the Applicant, N.D., is an "occupier", rather than a "tenant", so the *Residential Tenancy Act* does not apply to this situation.

The Applicant, D.M.'s, Notices and Application were initiated under the *Residential Tenancy Act*, and the *Manufactured Home Park Tenancy Act* might apply. However, I am not making any determinations on the issue of whether or not the *Manufactured Home Park Tenancy Act* applies, because both Parties did not make submissions on this issue. However, the Parties Applications and Notices are dismissed as this is clearly not a tenancy under the *Residential Tenancy Act*.

As a result, I do not have authority to render a decision in the disputes between the Parties in this matter, and I decline to hear this matter for lack of jurisdiction. I encourage the Parties to seek independent legal advice, as to whether or not the *Manufactured Home Park Tenancy Act* applies.

Conclusion

I dismiss the Applicants' Applications under the *Residential Tenancy Act* without leave to reapply.

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: June 20, 2019

Residential Tenancy Branch