



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause (the "One Month Notice"), pursuant to section 40; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 65.

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

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 Issue – Jurisdiction

At the start of the hearing, the respondent (landlord) raised the issue of jurisdiction and pointed to his documentary evidence indicating that I do not have jurisdiction to hear this matter. The respondent submitted that the applicant (tenant) lives in an RV when he's in the park for only 4-5 weeks per year as a seasonal recreational home and that the site is not his primary residence. The respondent submitted that the applicant has no right or possession of any portion of the park for 6 months per year as it's a seasonal agreement. The respondent submitted that the agreement between the parties is a licence to occupy and doesn't fall under the MHPTA. The applicant submits that there were Supreme Court Decisions that state this campground still falls under the MHPTA;

however the applicant did not provide specific citations, cases or copies of the decisions for this hearing.

I must determine if I have jurisdiction to hear this dispute. I turn to Residential Tenancy Policy Guideline #9 which states the following:

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

The Guideline also states the following:

Tenancies involving travel trailers and recreational vehicles

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.

In this case, I find that the applicant has the onus to provide evidence to support their application. Further, The Policy Guideline states that it is up to the party making an application under the Act to show that a tenancy exists.

When weighing all of the different evidence and testimony on this matter, I find on a balance of probabilities, this living situation is a licence to occupy living arrangement rather than a tenancy with a tenancy agreement. The applicant has provided insufficient evidence to establish that he is a tenant living under a tenancy agreement.

Conclusion

I decline to jurisdiction to hear this matter; accordingly this application is dismissed in its entirety 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 *Manufactured Home Park Tenancy Act*.

Dated: July 04, 2019

Residential Tenancy Branch