



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT

Introduction

This hearing dealt with an application pursuant to section 54 of the *Manufactured Home Park Tenancy Act* (the “Act”) for an order of possession for the tenant.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The applicant was represented by their advocate.

As both parties were present service of materials was confirmed. The respondent confirmed that they had been served with the applicant’s notice of hearing and evidence and that they have not served any materials of their own. Based on the testimonies I find that the respondent was duly served with all materials in accordance with sections 81 and 82 of the *Act*.

At the outset of the hearing the parties corrected the address of the manufactured home site as an incorrect address was provided on the application. The corrected address is recorded in this decision.

Issue(s) to be Decided

Do I have jurisdiction under the Act to make a decision on the application before me?
If so, is the applicant entitled to an Order of Possession?

Background and Evidence

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

The respondent raised the issue of jurisdiction as it was submitted that the subject property is in an RV/Campground and not a Manufactured Home Park. The parties agree that there is no written tenancy agreement and that the applicant pays a daily rate for use of their site of \$14.00 per day. The parties said that payments are made in advance for the number of days in a month. The parties agree that no GST or PST is paid for the site rental. The respondent testified that the site include power, water, sewer and cable hookup. The respondent submits that while some residents of the park have been occupants for a number of years, the park remains a camping site and not intended for permanent residence.

The applicant submits that they have been residing in the park for approximately 5 years. They say that they have paid the daily rate in advance through for each month during their occupation. The applicant submitted into evidence copies of some receipts for payments made to the respondent.

Analysis

Section 2 of the *Act* stipulates that subject to section 4 [what this *Act* does not apply to] the *Act* applies to tenancy agreements, manufactured home sites and manufactured home parks.

Residential Tenancy Policy Guideline 9 lists some of the factors to consider in determining if a situation is a tenancy or a license to occupy. These factors include the intended use of the manufactured home, the nature of the property where the home is located, the zoning restrictions set by the local government, and the services and restrictions imposed in the agreement. Although a manufactured home is defined under the *Act* in way that may include recreational vehicles, the onus is on the party making an application under the *Act* to establish that a tenancy agreement exists.

I find that the applicant has provided insufficient evidence in support of the existence of a tenancy agreement. I find that the rental unit is a campground site and the applicant pays a daily rate to occupy the campsite. There is no set monthly rent and the amount

paid each month fluctuates depending upon the number of days. While I accept the submission of the parties that both the applicant and other occupants have resided in the park for months or years, I do not find the duration of occupancy to have converted the agreement into a tenancy. Nor do I find the length of time of other occupants of the campsite to be persuasive evidence that this is a manufactured home park.

Based on the totality of the evidence submitted before me, I find that I do not have jurisdiction to make a decision on this application and I dismiss it in its entirety.

Conclusion

I find that I do not have jurisdiction in this matter and I dismiss the application for dispute resolution 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: April 14, 2020

Residential Tenancy Branch