



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

On February 14, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a One Month Notice to End Tenancy for Cause and for the Landlord to comply with the Act, Regulation or tenancy agreement.

The matter was scheduled as a teleconference hearing. The Landlord and Tenant attended the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and 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 Issues

The Landlord testified that the Tenant was being verbal and threatening to her and her daughter, so she gave the Tenant him a letter stating he had thirty days to vacate the property.

The Applicant/ Tenant applied to dispute the notice to end tenancy he received from the Respondent / Landlord. The notice to end tenancy was not issued on a proper form as required for tenancies falling under the *Residential Tenancy Act* or *Manufacture Home Park Tenancy Act* and is not an enforceable notice to end tenancy.

The Tenant applied under the *Residential Tenancy Act* to dispute the notice; however, it became clear at the start of the hearing that the Tenant was renting a driveway at a residential property to live in his recreational vehicle. I find that the application should have properly been made under the *Manufactured Home Park Tenancy Act* (“the MHPTA”). I have amended the Tenant’s application accordingly.

On April 3, 2020, two weeks prior to this hearing, the Tenant and his recreation vehicle vacated the residential property by police request/ direction. The Tenant did not amend his application for an order of possession to be permitted back to the rental site and did not make a request to be permitted to return during the hearing.

Since the Tenant has no desire to return to the rental site, I find that the tenancy ended on April 3, 2020 when the Tenant vacated the site.

Since the tenancy ended prior to the hearing, there is no need to determine whether or not the tenancy is ending based on issuance of a notice to end tenancy.

The Tenant requested an order that the Landlord comply with the Act, Regulations, or tenancy agreement and expressed concern regarding the way the tenancy ended. The question of whether or not the driveway arrangement falls under the jurisdiction of the MHPTA was raised.

The parties testified that in September 2019 the parties agreed to an arrangement that permitted the Tenant to park in the driveway of the residential property and live in his Recreational Vehicle.

The Tenant testified that the agreement was on a month to month basis, and the Landlord testified that the agreement is on a week to week basis. Both parties agreed that the Tenant paid \$100.00 each week for rent. Both parties agreed that a security deposit was not required or paid to the Landlord. The Tenant testified that the living arrangement was to include electricity.

The Landlord testified that electricity was not included in the rent and the arrangement only included use of the driveway. The Landlord testified that the Tenant moved out of the drive way for a month then returned. The Landlord testified that there was no notice required to end the tenancy. The Landlord stated that the arrangement was not put into writing.

Analysis

The Residential Tenancy Policy Guideline #9 Tenancy Agreements and Licenses to Occupy clarifies the factors that distinguish a tenancy agreement from a licence to occupy. The Guideline provides:

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. 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.

If there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created, unless there are circumstances that suggest otherwise. For example, a park owner who allows a family member to occupy the site and pay rent, has not necessarily entered into a tenancy agreement. In order to determine whether a particular arrangement is a license or tenancy, the arbitrator will consider what the parties intended, and all of the circumstances surrounding the occupation of the premises.

The Guideline also provides: “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.

The policy guideline provides that some of factors that may that may weigh against finding a tenancy are:

- *Payment of a security deposit is not required.*
- *The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.*
- *The occupier pays property taxes and utilities but not a fixed amount for rent.*
- *The owner, or other person allowing occupancy, retains the right to enter the site without notice.*
- *The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.*
- *The parties have agreed that the occupier may be evicted without a reason, or may vacate without notice.*
- *The written contract suggests there was no intention that the provisions of the Manufactured Home Park Tenancy Act apply.*

After considering the testimony and evidence of the parties and after considering the policy guideline, I make the following findings:

I find that the basic components of a contract were met. The Landlord offered to rent the driveway to the Tenant and the Tenant accepted the Landlord's verbal offer and agreed to rent the driveway. Both parties entered into the agreement voluntarily, understanding the agreement.

I have considered whether the contract the parties entered into is a tenancy agreement or a licence to occupy arrangement. I find that there is insufficient evidence before me to establish that the agreement included anything more than rental of a spot in the driveway. I find that the Landlord retained control over the driveway/ site and the right to enter the site without notice.

I find that there was no security deposit required or paid by the Tenant and there was no requirement for the Tenant to give the Landlord advance notice that he was ending the agreement. I accept the Landlord's testimony that the Tenant moved off the site for a short period and then returned on a later date.

It also appears the arrangement did not include water, electricity, or sewer. There is insufficient evidence from the Tenant to establish that the agreement for rent included any other service or facility. There is no written contract provided to establish terms of the agreement or specifying that the *Residential Tenancy Act* or MHPTA applies.

Based on the evidence before me, I find that the parties entered into a licence to occupy agreement where the Applicant/ Tenant was given permission to use the drive way, but that permission could be revoked at any time.

I find that the applicant is a licensee and is not entitled to file an application under the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act*.

Based on my finding, I decline jurisdiction to make an order for the Respondent/ Landlord to comply with the Act.

Conclusion

The Tenant's application to cancel a notice to end tenancy is dismissed. The arrangement ended when the Tenant vacated the driveway on April 3, 2020.

Based on the evidence before me, I find that the parties entered into a licence to occupy agreement where the Applicant/ Tenant was given permission to use the driveway, but that permission could be revoked at any time.

I find that the applicant is a licensee and is not entitled to file an application under the MHPTA.

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 22, 2020

Residential Tenancy Branch