



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FFT

This hearing dealt with an application pursuant to the *Manufactured Home Park Tenancy Act* (the “**Act**”) for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) pursuant to section 39;
- authorization to recover the filing fee for this application from the respondent pursuant to section 65.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue - Jurisdiction

This dispute is between a mother and a daughter. The applicant (“**SG**”) lives in a modular home located on a farm owned by the respondent (“**BF**”). SG and her then-husband transported a modular home to the farm at some point prior to 2014. BF testified that she allowed SG to do so because of issues SG was having with mould in her then-rental unit.

SG owns the modular home. The modular home is two levels and over 2,000 square feet. SG and her then-husband finished the second story of the home once the home was moved onto the farm. BF paid for another relative to do some of the finishing work.

The parties agree that BF did not charge any rent. They agree that SG helped out around the farm as needed. SG testified that, during a typical month, she and her then-husband would do approximately two to three hours of work around the farm. Some months, when BF and her husband would go away on vacation, SG would do more work. Some months, she did no work.

The parties agree that BF allowed SG to move the modular home onto the farm as an act of generosity, and it was not motivated for economic reasons. There is no written tenancy agreement.

At some point, the relationship between SG and BF soured. I will not discuss the details of this, however, as it is not relevant to this proceeding.

Based on the testimony of the parties, I find that I do not have jurisdiction to hear this dispute. The arrangement between the parties does not appear to be a typical landlord tenant relationship. BF contributed to the construction of the modular home. SG pays no rent whatsoever. The services provided by SG in exchange for being permitted to keep the modular home on the farm are not clearly defined and are irregularly required. The arrangement appears to be one of a familial nature, rather than formal relationship between a landlord and tenant.

Policy Guideline 9 considers whether the Act applies to arrangement such as the one between the parties. It states:

B. TENANCY AGREEMENTS

Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and
- the tenant pays a fixed amount for rent.

C. LICENCES TO OCCUPY

Under a licence to occupy, a person is given permission to use a rental unit or site, but that permission may be revoked at any time. The Branch does not have the authority under the MHPTA to determine disputes regarding licences to occupy.

[...]

Other factors that may distinguish a tenancy agreement from a license to occupy include:

- payment of a security deposit;
- the parties have a family or personal relationship, and occupancy is given because of generosity rather than business considerations.

An arbitrator will weigh all the factors for and against finding that a tenancy exists.

In light of the fact that there is no fixed rent payable, the parties have a close family relationship, and BF allowed SG to occupy the farm as an act of generosity, rather than for business considerations, I find that the arrangement between the parties is a license to occupy, rather than a tenancy.

Policy Guideline 9 also lists the length of the arrangement as a factor to consider. I note that this factor does favor finding my finding that a tenancy relationship exists (as do a few others). However, these factors are outweighed by the lack of fixed consideration (that is, monthly rent) being payable. The arrangement between the parties has the hallmarks of an accommodation made between family members. I find that neither party had any intention to establish a landlord-tenancy relationship at the start of the tenancy.

Policy Guideline 4 states:

Section 2 of the MHPTA states the Act applies to tenancy agreements, manufactured home sites and manufactured home parks. A tenancy agreement under the MHPTA does not include a license to occupy.

As such, I find that the Act does not apply to the parties. Accordingly, I have no jurisdiction to adjudicate this matter.

I dismiss SG's application, 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: May 12, 2020

Residential Tenancy Branch