



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, CNR, FFT**

Introduction

This hearing dealt with an application filed pursuant to the *Manufactured Home Park Tenancy Act* ("Act").

- The applicant filed for:
An order for the respondent to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 55;
- An order to cancel a 10 day notice for unpaid rent or utilities pursuant to section 39; and
- Authorization to recover the filing fee for this application from the respondent pursuant to section 65.

The applicant attended the hearing accompanied by a social worker. The respondents attended the hearing with their office manager, GS. As both parties were present, service of documents was confirmed. The respondent acknowledged service of the applicant's Notice of Dispute Resolution Proceedings but did not receive the applicant's evidence. The applicant testified he only uploaded the evidence to the Residential Tenancy Branch website but did not provide copies to the respondents. The applicant's social worker testified that the evidence of the applicant could also be found in the respondent's evidence which the applicant acknowledges receiving. In light of this, the applicant's evidence was excluded from the hearing as it was not exchanged with the other party in accordance with rule 3 of the Residential Tenancy Branch Rules of Procedure.

Preliminary Issue - Jurisdiction

At the commencement of the hearing, the respondent testified that the agreement between the parties does not fall under the jurisdiction of the *Manufactured Home Park Tenancy Act*. The respondent runs a private campground with no tenants. Their guests are campers who pay camping fees. The campground charges GST on the campsites

and campers are given reduced rates for paying their fees in advance. Fees for the campsites change during the summer months when seasonal campers come to the campground. The respondent acknowledges accepting a security deposit of \$350.00 when the applicant took possession of the campsite. The applicant and respondent did not sign a tenancy agreement; the camper signed a reservation form indicating a fixed term from October 15, 2019 to May 1, 2020. A 'monthly agreement' was signed by the tenant with a term that states: *The campground does not come under the tenancy Act – We have the right of immediate eviction and seizure of property if we deem necessary.* Further, the respondent testified that the applicant's 'campsite' has been reserved by vacationers as the applicant was scheduled to have his tenancy over by the time of this hearing.

Residential Tenancy Branch Policy Guideline PG-9 clarifies the factors that distinguish a tenancy agreement from a license to occupy.

Tenancy agreement is defined in the Manufactured Home Park Tenancy Act (MHPTA), as 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. It does not include a licence to occupy.

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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.***

***It is up to the party making an application under the MHPTA to show that a tenancy agreement exists.** To determine whether a tenancy or licence to occupy exists, an arbitrator will consider what the parties intended,*

and all the circumstances surrounding the occupation of the rental unit or site.

Some factors that may help distinguish a tenancy agreement from a licence to occupy are discussed below. No single factor is determinative.

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Factors that may suggest the MHPTA does not apply include:

- *the park (or property) owner retains access to or control over portions of the site and retains the right to enter the site without notice;*
- *rent is charged at a daily or weekly rate, rather than a monthly rate and tax (GST) is paid on the rent;*
- *the parties have agreed that the occupier may be evicted without a reason, or may vacate without notice;*
- *the agreement has not been in place for very long;*
- *the property owner pays utilities and services like electricity and wi-fi; and*
- *there are restricted visiting hours.*

Other factors

Other factors that may distinguish a tenancy agreement from a licence 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.

As PG-9 states, ***It is up to the party making an application under the MHPTA to show that a tenancy agreement exists.*** The applicant turned to the payment of the security deposit as a factor to consider the tenancy agreement exists. No other submissions were made on this point by the tenant.

I find several factors that lead me to find that the agreement between the parties was a license to occupy and not a tenancy agreement. These include the variable rate paid for 'rent' of the campsite at different times of the year; the charging of GST on the 'rent'; the short term of the agreement running from mid-October to May 1st; the agreement

that the 'camper' could be evicted immediately; and the payment of a security deposit which is specifically prohibited under the *Act*.

Based on these factors, I find there is no tenancy agreement established between the parties and that consequently, the *Manufactured Home Park Tenancy Act* does not apply to the agreement between the parties. As such, I decline to hear the application filed under this *Act*.

Conclusion

I decline to hear this matter as I find I have no jurisdiction to consider this application.

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: June 26, 2020

Residential Tenancy Branch