



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC, CNC, FFT

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 40;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 55; and
- authorization to recover his filing fee for this application from the respondent pursuant to section 65.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The respondent acknowledged receipt of evidence submitted by the applicant. The respondent submitted documentation to the Branch but did not submit any documentation to the applicant. Pursuant to Residential Tenancy Branch Rules of Procedure 3.17;

*The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.*

As the respondent made no attempt to serve their evidence on the applicant, I have not considered the evidence submitted by the respondent.

### Preliminary Issue – Jurisdiction

The applicants advocate submits that this matter falls under the jurisdiction of the Residential Tenancy Branch and that the *Manufactured Home Park Tenancy Act* applies. The respondent adamantly disputes that position. The advocate submits that the MHPTA applies despite the fact there is not a signed tenancy agreement in place. The advocate submits that this agreement has been in place for over a year, this is the applicants' permanent residence, the tenant pays a monthly rent with no taxes, and that the applicant has made modifications; such as installing a deck, a fenced area, and a garden. The advocate submits that Policy Guideline 9 addresses arrangements such as these and that it can be considered that a tenancy agreement is in place and that the MHPTA applies.

The respondent submits that this is a one-acre piece of land that his office sits on. The respondent submits that only wheeled Recreational Vehicles are parked on the property and that at no time any Manufactured Homes have been on site. The respondent submits that GST is included in the price as they are entitled to do so when charging for 30 days or more at any given time. The respondent submits that he pays for all of the utilities and services. The respondent submits that he retains the right to any and all sections of the property. The respondent submits that the applicant has not lived on the property for a long period and that all parties are told it is a short-term Recreational Vehicle Park. The respondent submits that the property is not set up for or is suitable for long term residence.

### Analysis

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 arguments are reproduced here. The principal aspects of the applicants claim and my finding is set out below.

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

#### **RV parks or campgrounds**

*RV parks or campgrounds In Steeves, the Court set out that while the MHPTA is not intended to apply to seasonal campgrounds occupied by wheeled vehicles used as temporary accommodation, there are situations where an RV may be a permanent home if it is occupied for "long, continuous periods." See also: D. & A. Investments Inc. v. Hawley, 2008 BCSC 937. As a result, if the home is a*

*permanent primary residence then the MHPTA may apply even if the home is in an RV park or campground.*

*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.*

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 the evidence and testimony on this matter, I find on a balance of probabilities, this living situation does not fall under the Manufactured Home Park Tenancy Act for the following reasons. The applicant has failed to provide sufficient evidence that she had exclusive use to the site, failed to provide sufficient evidence that this was her permanent residence, and failed to provide sufficient evidence that this was a long-term arrangement. The applicant has provided insufficient evidence to establish that she is a tenant living under a tenancy agreement.

### Conclusion

I decline 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: August 27, 2020

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Residential Tenancy Branch