



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, FF

Introduction, Preliminary and Procedural Matters-

This hearing dealt with the applicant's application for dispute resolution under the Manufactured Home Park Tenancy Act (Act) for:

- an order of possession of the manufactured home site as the tenant has been denied access; and
- recovery of the filing fee.

The applicant and the respondent attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed that I would have to decide on the matter of whether this dispute fell under the jurisdiction of the Act.

The parties then provided their testimony on this issue as well as the issues in the tenant's application.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and/or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that the parties were provided cautions at the beginning of the hearing. I instructed the parties to not interrupt during the testimony of the other party. Despite repeated cautions, the applicant continued to interrupt the proceedings. I finally informed the applicant that the next interruption would result in him being excluded from the hearing.

I also instructed the parties that recordings of Residential Tenancy Branch (RTB) hearings are not allowed and to turn off any recording equipment immediately if a recording was being made.

The respondent also said that her name was listed incorrectly in the application for dispute resolution. The respondent provided her legal, full name, and I have therefore made the change in the style of cause page in this Decision.

Issue(s) to be Decided

Does the Act apply to this dispute and do I have jurisdiction to decide this dispute?

If so, is the applicant entitled to an order of possession of the manufactured home site and to recover the cost of the filing fee?

Background and Evidence

The respondent said that she is a tenant of the landlord of the property in question, living in a home with some acreage.

The respondent said that she had the landlord's permission to rent parking/storage to a third party. As a result, the respondent submitted she advertised property available for storage, to which the applicant responded. The respondent submitted that there was an agreement with the applicant to park and store a variety of cars, trucks, campers, motorcycles, etc. next to her house. A copy of the agreement was filed into evidence by both parties.

The agreement was not titled or signed, but appeared to have been sent in an email from the respondent. The applicant was to pay a \$100 deposit, which was to be deducted from his June 2020 rent. The agreement was for the "north east side of the driveway and the crush rock pad located beside the garage at the above mentioned property".

The agreement was also amended to allow the storage of two shipping containers or semi trailers.

The respondent said the tenant has not stayed even one night in any of the vehicles since he began storing vehicles, recreational vehicles, or containers.

In response, the applicant said he had a tenancy with the respondent and has paid monthly rent, stating further that the respondent also advertised the property to be for residential use.

The applicant said he moved into a recreational vehicle with his wife and children in September, that his children are enrolled in the local school district, and that he is a tenant.

The applicant said he filed this application as the respondent has prevented him access to the property by blocking the driveway and locking the gate. The applicant said he was forced to move him and his family from the recreational vehicle where he was living and that he now does not want to return to the property. The applicant said he only wanted access to retrieve all his vehicles and equipment left at the property, which could be a 2-4 week process.

I asked the tenant what he thought would happen to him if the respondent's landlord ended their tenancy and he replied that he assumed he would have to vacate the property.

Analysis

My authority is limited to disputes involving tenancies that fall under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*.

Where there is a question of jurisdiction, the applicant bears the burden to prove the Act applies, on a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The respondent said that the applicant has never resided in any of the vehicles or recreational vehicles on the parcel of land he uses for storage and that she only has permission from the owner to rent out land for storage or parking.

The applicant said that the respondent's advertisement indicated the land could also be used for RV parking. The applicant states he has resided in the recreational vehicle since September 2020.

Residential Tenancy Branch Policy Guidelines 9 and 27 provides information with respect to jurisdiction concerning recreational vehicles, campgrounds and licenses to occupy. As provided in those policy guidelines, a recreational vehicle may meet the definition of a "manufactured home" but I must be satisfied that the property rented to the occupier is a manufactured home site in a manufactured home park under a tenancy agreement as opposed to a license to occupy.

Upon consideration of the relevant evidence before me, I find I do not have jurisdiction to decide this dispute, for the following reasons:

Upon a review of the document the applicant referred to as a tenancy agreement, there was no indication that anything other than parking or storage was provided. The document indicated that a short term occupancy up to seven (7) days from time to time was permitted, as long as the occupancy was paid for by the applicant. I find the tenancy agreement failed to prove that the intended purpose was for use as living accommodation.

The Act states that a "manufactured home site" means a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home.

Although the applicant states that he has resided in a recreational vehicle, the respondent has said he has never spent a night there.

I find this disputed evidence, without more, is not sufficient to meet the applicant's burden of proof that he has occupied the recreational vehicle for residential use.

Further, the applicant provided insufficient evidence that the site was equipped with water lines, sanitary waste disposal systems or other utilities. Further, there was no evidence provided that the land was zoned for use as a campground or manufactured home park.

The respondent was a tenant herself and only had the legal possession of the property, but not ownership. Therefore, I find that the applicant here did not have exclusive right to possession of the property on which his vehicles and containers sat, as a tenant would, and that he was granted a license to occupy.

Considering there was no evidence that the property was equipped with services and utilities one would ordinarily expect in a manufactured home park (water lines, sanitary waste disposal, electrical connections and the like) or that the property was zoned for use as a manufactured home park, I am not satisfied that the subject property is a manufactured home site in a manufactured home park to which the Act applies.

Conclusion

For the above reasons, **I decline to accept jurisdiction to resolve this dispute.**

The applicant remains at liberty to pursue a remedy against the respondent in any other applicable forum. The applicant stated in the hearing he was aware of his rights to a judicial review of this Decision and, although no decision was made at the hearing, that his lawyer would be pursuing those rights on his behalf.

In all cases, the applicant confirmed that he no longer lives on the property and has no interest in going back, other than to have all his personal property removed.

The matter of the tenant's request for an order of possession of the manufactured home site for occupation purposes is therefore moot.

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: December 18, 2020

Residential Tenancy Branch