



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT

Introduction

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

- an Order of Possession of the rental unit pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

Preliminary Matter-Do I Have Jurisdiction to Hear This Matter?

The tenants confirmed in the hearing the following facts: This tenancy began in February 2019 when KC and SC moved their 5th Wheel RV on the property in exchange for monthly rent in the amount of \$300.00. KC testified that he lived in the RV with his wife SC. Commencing September 2020, the applicants started renting the shop on the property for \$500.00 per month from the same landlord. KC testified that he owned and operated a trucking business. The applicants testified that on or about April 29, 2021, the landlord had locked the applicants out of the shop and property, preventing the applicants' access to the property and the shop. The applicants testified that they used the shop for accommodation in addition to the storage of their personal items such as tools. The applicants testified that they wanted access to their trailer, as well as the vehicles parked on the property, and personal belongings such as tools stored in the shop. Both parties confirmed in the hearing that the shop was sometimes referred to as the "garage", which was the same building.

The applicants testified in the hearing that they filed this application as they needed access and time to clear out their personal belongings, which was at least a month.

The landlord does not dispute that she had locked the applicants out of the property, but testified in the hearing that the applicants may contact her by phone to arrange for the pickup of the 5th Wheel and the vehicles on the property. Both parties confirmed that as KC and SC were currently out of town, that the applicants would require some time to accomplish this. The landlord testified that she does not consent to the tenants' access to the shop as the rental of the shop was a separate matter.

Analysis

I find that there are two parts to the tenants' application. The tenants paid monthly rent in the amount of \$300.00 to park their 5th Wheel RV, and another \$500.00 per month to rent the shop. As noted in the tenants' own application, the tenants indicated "5TH WHEEL RV AND SHOP ON PROPERTY" as part of the rental address.

In consideration of the 5th Wheel RV, the landlord agreed in the hearing that she would allow access to the applicants to pickup and move their RV and vehicles parked on the property, I confirm in this decision the landlord's consent. As KC and SC are currently out of town, the landlord agreed to allow the tenants until July 31, 2021 to do this. The landlord testified that the applicants may contact her by phone to make arrangements. As the landlord consented to communicating with the tenants for the purpose of retrieving the RV and vehicles, I am not satisfied that an Order of Possession is necessary to retrieve these items, and accordingly, I dismiss the tenants' application pertaining to the 5th Wheel RV and vehicles with leave to reapply.

The landlord did not consent to the applicants' access to the shop or the items stored in the shop, which forms the other part of this application. Although located on the same property, the *Act* does not apply in circumstances where the residence is used for business or commercial purposes.

Residential Tenancy Policy Guideline #14 states that neither the Residential Tenancy Act nor the Manufactured Home Park Tenancy Act applies to a commercial tenancy" and that "sometimes a tenant will use a residence for business purposes or will live in a premises covered by a commercial tenancy agreement. The Residential Tenancy Act provides that the Act does not apply to "living accommodation included with premises that (i) are primarily occupied for business purposes, and (ii) are rented under a single agreement"

“To determine whether the premises are primarily occupied for business purposes or not, an arbitrator will consider what the “predominant purpose” of the use of the premises is. Some factors used in that consideration are: relative square footage of the business use compared to the residential use, employee and client presence at the premises, and visible evidence of the business use being carried on at the premises”

The undisputed testimony before me is that when not away for work purposes, SC and KC occupied the 5th Wheel RV for accommodation. Along with their son PC, they also rented the shop from the respondent. Both parties confirmed that the applicants still had their personal belongings in the shop, which included tools that belonged to the applicants. In consideration of the evidence before me, I find that KC and SC used the 5th Wheel RV as their primary accommodation. Although the shop may have also been used for living accommodation, I find that there was reference to the storage of tools in the shop. I am not satisfied that the evidence before me sufficiently supports that the renting of the shop falls within the definition of a tenancy as defined under the Residential Tenancy Act or the Manufactured Home Act. I find that there is evidence that supports the use of the shop for commercial or business use, and it is clear that the tenants had paid a separate amount, specifically \$500.00, to rent the shop. I am not satisfied that the primary use of the shop was for residential purposes. Accordingly, I find that I do not have jurisdiction to hear this matter.

Conclusion

I dismiss the tenants’ application pertaining to the 5th Wheel RV and vehicles with leave to reapply as the landlord agreed to allow the tenants to make arrangements on or before July 31, 2021 in regard to the 5th Wheel RV and vehicles.

I find that I do not have jurisdiction to hear the remaining matters.

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 29, 2021

Residential Tenancy Branch