



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BROWNSVILLE RV PARK  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **FFT, CNR, OLC, PSF**

### **Introduction**

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

The applicant applied for:

- Authorization to recover the filing fee from the other party pursuant to section 65;
- An order to cancel a notice to end tenancy for unpaid rent pursuant to section 39;
- An order for the respondent to comply with the *Act*, regulations or tenancy agreement pursuant to section 55; and
- An order to provide services or facilities required by the tenancy agreement or law pursuant to section 55.

The applicant attended the hearing and the respondent was represented at the hearing by an agent, BS ("respondent"). The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the *Act*.

The respondent acknowledged service of the applicant's application for dispute resolution and stated he had no issue with timely service of it. The applicant acknowledged service of the respondent's evidence which was a photo taken of the applicant's application for a license to occupy a site at the RV park.

### **Preliminary Issues**

The applicant advised me that she was not served with a notice to end tenancy and is not seeking to cancel one. The only issue the applicant wants decided is whether the

respondent was acting within their rights when the respondent started charging the applicant an additional \$40.00 per month as an increased fee for electricity.

The respondent argues that the *Manufactured Home Park Tenancy Act* does not apply to the relationship between the applicant and the respondent as the contract governing them is a license to occupy and not a tenancy agreement.

#### Issue(s) to be Decided

Are the parties bound by a license to occupy or a tenancy agreement under the *Act*?

#### Background and Evidence

The parties agree to the following facts. The applicant owns a RV travel trailer and she pays \$590.00 per month to stay in the RV park and GST is included in the rent. In October, 2020, the respondent added an additional fee of \$45.00 per month as a hydro fee which she has never had to pay since moving in on April 2, 2012. Prior to October 2020, the only thing the applicant ever had to pay for was her own propane, since everything else was provided by the RV park.

There are no restrictions on visiting hours at the RV park. Visitors are not restricted but if they stay a long time the respondent can charge extra. The applicant acknowledges the occupants living there are required to be quiet after 11:00.

The applicant gave the following testimony. She owns a timeshare at another RV park in the USA and goes there every summer but continues to pay the monthly fees at the respondent's RV park while she is gone. The parties agree that the respondent does not rent out the applicant's RV site while she is in the USA. The applicant states that she has "frost-free" plumbing but admits that it's a regular RV hose that is wrapped with insulation so that it does not freeze. She has a permanent shed at the RV site and used to have a deck but the deck has since rotted away. When she makes trips to the USA, her husband sometimes stays behind, sleeping in the shed on her site. He uses the showers and bathroom that are provided as common facilities by the RV park.

The respondent testified that the document signed by the applicant is clearly a "license to occupy" and not a tenancy agreement. The respondent points out that there is a previous decision made by the Residential Tenancy Branch where the arbitrator found there is no tenancy agreement, but a "license to occupy". That decision was not provided to me in the respondent's evidence.

The applicant comes and goes as she pleases and the RV park has not served any notices to end tenancy to her. The RV park has "kicked out" undesirable occupants in the park but it wasn't done by serving notices to end tenancy.

## Analysis

Residential Tenancy Branch Policy Guideline PG-9 provides guidance to parties regarding tenancy agreements and licenses to occupy.

### **A. LEGISLATIVE FRAMEWORK**

*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.*

*Under the MHPTA, a manufactured home is defined as a structure, other than a float home, whether or not ordinarily equipped with wheels, that is*

- designed, constructed or manufactured to be moved from one place to another by being towed or carried, and*
- used or intended to be used as living accommodation.*

### **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.*

The policy guideline also provides criteria for an arbitrator to assess whether the agreement is a tenancy agreement or a license to occupy.

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

respondent's right to access the site, for a term and the tenant pays a fixed amount for rent.

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. Factors that may suggest the MHPTA does not apply include:

- evidence that 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.

The applicant argues that she has exclusive possession of the site, stating that the respondent does not come onto her property however the respondent counters that the site is maintained by the RV park as they cut the lawns around the site and maintain the park's landscaping. The parties both acknowledge that rent is paid on a monthly rate however GST is included in the monthly rate.

The respondent testified that undesirable occupants have been "kicked out" of the RV park without being served with notices to end tenancy; this was not disputed by the applicant. Likewise, both parties agree that the applicant can leave the RV park whenever she wants without the requirement to serve the respondent with a month's notice.

The agreement has been in place for almost 10 years, however this fact I do not find to be a determinative factor in deciding whether the agreement is a long-term license to occupy or a tenancy agreement. I find the RV park was an inexpensive option for the applicant to live in and she chose to remain there due to the low cost.

It is evident that electricity is paid by the RV Park, as the applicant's application seeks to counter the respondent's notice to increase the park fees to accommodate an increase in electricity costs. Who pays for wi-fi was not canvassed during the hearing. The applicant states the only thing she pays for on her own is for propane.

There are no restrictions on visiting hours at the RV park. Visitors are not restricted but if they stay a long time the respondent can charge extra.

I also looked towards features of permanence at the applicant's RV site. The applicant has a shed on the site and states she has a frost-free water connection, however I find the water connection is not permanent as it is simply a garden hose that has been wrapped in insulation and the shed is a non-permanent structure. The applicant does not live in the RV park year-round as she spends part of the year at a timeshare RV park in the USA. It is evident that the applicant takes her RV out regularly and that it is not permanently situated in the respondent's RV park.

As the policy guideline states, it is up to the party making the application to show that a tenancy agreement exists. Based on the factors above, I find that on a balance of probabilities, the agreement between the parties more closely aligns with a license to occupy than a tenancy agreement. As such, I find that the *Manufactured Home Park Tenancy Act* does not apply to the agreement between the parties, and I must decline jurisdiction to render a decision regarding this dispute resolution.

#### Conclusion

The *Manufactured Home Park Tenancy Act* does not have jurisdiction over licenses to occupy and I therefore decline jurisdiction over this matter.

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: November 23, 2021

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Residential Tenancy Branch