



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, OLC, MNDCT, AAT, DRI, FFT

### Introduction

This hearing dealt with the Application for Dispute Resolution submitted by the Applicant under the *Manufactured Home Park Tenancy Act* (“the *Act*”) to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), to request an order to have the Landlord comply with the legislation, for a monetary order for compensation for monetary loss or other money owed, for an order to allow access to the rental unit for the Tenant or their guests, to dispute a rent increase and to recover the filing fee paid for this application. The matter was set for a conference call.

The Applicant and their legal counsel (the “Applicant”) and the Respondents and their legal counsel (the “Respondent”) attended the conference call hearing and were each affirmed to be truthful in their testimony. Each party was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter- Jurisdiction

Jurisdictional issues were brought up at the outset of these proceedings by the Respondent.

The Applicant was asked if they were prepared to submit arguments regarding jurisdiction, the Applicant agreed that they were prepared to proceed.

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments and finds relevant to jurisdiction are reproduced here.

The Applicant testified that they had been renting the pad site at the campground since March 2017, and that the trailer is their home and that they believe their tenancy falls under the jurisdiction of the Residential Tenancy Branch.

The Applicant provided further details of the manufactured home, testifying that they had a sewer connection to their mobile home, that they had installed a skirt and a deck, as well as a shed. The Applicant submitted that due to the length of time that they had been renting the pad site and the improvements that they had made to the property that this rental was a tenancy. The Applicant submitted that they were currently residing off the park with their mother due to an injury they sustained that resulted in an amputation and their mother's poor health. The Applicant submitted five pictures of their trailer and 12 pages of rent cheques receipts into documentary evidence.

The Respondent submitted that they had taken over the management of the campsite when the previous owner passed away, and that they offer vacation and recreation only and that the Applicant only has a license to occupy the site, and that they believe their relationship with the Applicant is of a commercial nature and does not fall under the jurisdiction of the Residential Tenancy Branch.

The Respondent testified that the pad the applicant is renting is in a campground that is run for commercial purposes and that it was never the intent of the previous owner or this Respondent to enter into a tenancy with the Applicant. The Respondent submitted that this rental does not meet the conditions of a tenancy for several reasons as follows; the Applicant was never provided with exclusive access to the pad site, there is no tenancy agreement, the Respondent charges campground fees not rent and that the Respondent charged GST on all fees collected.

The Applicant agreed that they have been paying GST until April 2021 but that they had stopped paying the requested GST after they received advice that manufactured home park tenancies did not have to pay tax to a landlord.

The Respondent also testified that the Applicant does not live on the site but only visits the site campground and never stays overnight. The Respondent testified that the applicant maintains a primary residence elsewhere, the address listed on the cheques that the Applicant submitted into documentary evidence. The Respondent submitted two witness statements from other campers to support their claim that the Applicant does not use this pad rental site as a primary residence into documentary evidence.

The Applicant's council submitted that whether or not this was the Applicant's primary residence was irrelevant in relation to the jurisdiction of this dispute.

The Respondent testified that the Applicant had been permitted to add a trailer skirt and deck but that they were allowed as they are removable, as only non-permanent structures are permitted in the camp. The Respondent acknowledged the length of time the Applicant had been renting the pad but submitted that the length of time alone was insufficient to prove tenancy under the *Act*.

### Analysis

Based on the above, the testimony and evidence and on a balance of probabilities, I find as follows:

The first and primary issue of these parties is whether the *Manufactured Home Park Tenancy Act* has jurisdiction over their dispute. The *Manufactured Home Park Tenancy Act* was established to govern tenancies in manufactured home parks. The Act states what it applies to and what it does not apply to as follows:

#### ***What this Act applies to***

*2 (1) Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, manufactured home sites and manufactured home parks.*

*(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.*

***What this Act does not apply to***

*4 This Act does not apply with respect to any of the following:*

- (a) a tenancy agreement under which a manufactured home site and a manufactured home are both rented to the same tenant;*
- (b) prescribed tenancy agreements, manufactured home sites or manufactured home parks.*

The Residential Tenancy Branch Policy Guideline #9 Tenancy Agreements and License to Occupy and Policy Guideline provides further guidance, stating the following:

**A. LEGISLATIVE FRAMEWORK**

“Tenancy agreement is defined in the Residential Tenancy Act (RTA) as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

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. 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.”

In this case, the Applicant has submitted that they have a tenancy under the *Act*, and the Respondent has submitted that the arrangement is a license to occupy as they run a campground and therefore this dispute does not fall under the *Act*. Policy Guideline #9 provides further guidance on campground rentals, stating the following:

#### **“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 that is occupied for “long, continuous periods.

While not solely determinative, if the home is a permanent primary residence then the MHPTA may apply even if the home is in an RV park or campground. See also: *D. & A. Investments Inc. v. Hawley*, 2008 BCSC 937.

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.”

The Applicant has submitted that due to the length of time and the additional structures that they have added to the site, that this rental is a tenancy under the *Act*.

The Respondent has submitted that the intent for this rental was always of a commercial nature, proven by their collection of GST, their requirement for no permanent structure, that they maintained the right to enter the site without notice, and that the Applicant maintains a primary residence elsewhere, only attending the property for recreational use, and that these factors make this agreement a licence to occupy and not a tenancy under the *Act*. The Respondent referenced the decision from *Steeves v. Oak Bay Marina Ltd.*, 2008 BCSC 1371 and *D. & A. Investments Inc. v. Hawley*, 2008 BCSC 937 in their submissions to these proceedings.

“In *Steeves v. Oak Bay Marina Ltd.*, 2008 BCSC 1371, the court defined “living accommodation” as a “permanent primary residence”. In *D. & A. Investments Inc. v. Hawley*, 2008 BCSC 937, the court upheld an arbitrator’s decision that held that the *MHPTA* applied to recreational vehicles in an RV park because they were being used as a principal residence over several years, rather than for recreational use.”

Taking into consideration the decision in *Steeves v. Oak Bay Marina Ltd.*, 2008 BCSC 1371 and *D. & A. Investments Inc. v. Hawley*, 2008 BCSC 937, I find that whether or not this pad rental is the Applicants principal residence to be the key matter in determining jurisdiction in this case. Policy Guideline #9 Tenancy Agreements and License to Occupy and Policy Guideline provides further guidance on determining permanent primary residence, stating the following:

“The home is a permanent primary residence

In *Steeves v. Oak Bay Marina Ltd.*, 2008 BCSC 1371, the BC Supreme Court found:

the *MHPTA* is intended to provide regulation to tenants who occupy the park with the intention of using the site as a place for a primary residence and not for short-term vacation or recreational use where the nature of the stay is transitory and has no features of permanence.

Features of permanence may include:

- The home is hooked up to services and facilities meant for permanent housing, e.g. frost-free water connections;
- The tenant has added permanent features such as a deck, carport or skirting which the landlord has explicitly or implicitly permitted;
- The tenant lives in the home year-round;
- The home has not been moved for a long time.”

I have heard conflicting arguments of the permanence of the services hook up, the skirting, and the deck added to this mobile home, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, that burden of proof falls on the Applicant.

I have reviewed the picture and documentary evidence submitted by the Applicant, and although these pictures do show added structures to the mobile home, which is a consideration in determining permanence, I am unable to determine from these pictures if these additions are permanent or temporary. Additionally, I can not ignore the Applicant's own submission in these proceedings that they are not currently living at the rental site but instead leaving elsewhere with family. Also, the Applicant's submission of not living in the camp were further corroborated in the witness statements provided by the Respondent.

Furthermore, at no time during these proceedings, or in their written submissions, does the Applicant claim that this had ever been their primary residence. In fact, the Applicant's own counsel submitted that whether or not this was a primary residence of the applicant was not relevant in determining jurisdiction, which I find is not supported by the BC Supreme Court decision in *Steeves v. Oak Bay Marina Ltd.*

Based on the Applicant's verbal submission, the Respondent's witness statements and the Applicant's cheque evidence, I find that on a balance of probabilities, the Applicant does have a permanent primary residence elsewhere and has only been using this pad rental site as a location for recreational use.

Additionally, I must also factor in the intent of these parties when they entered into the verbal agreement to rent this pad site. Although the original owner has since passed away, I find their actions of charging GST to clearly show that it was their intent to have a commercial relationship with the Applicant and not a tenancy relationship that would fall under the *Act*.

Therefore, For the reasons stated above, I find that the rental situation that exists between these parties does not fall under the jurisdiction of the *Act* and that for this reason, I must decline to accept jurisdiction over the Applicant's dispute with the Respondent.

### Conclusion

For the reasons stated above, I decline jurisdiction to resolve this dispute. I have made no determination on the merits of the Applicants application. Nothing in my decision prevents either party from advancing their claims before a Court of competent jurisdiction.

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 4, 2021

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Residential Tenancy Branch