



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RIVERSIDE RV AMPGROUNDS AND
CABINS and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP

Introduction

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

- an order to the landlord to make emergency repairs to the rental unit/site pursuant to section 27.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary issue – Jurisdiction

At the outset of the hearing the respondent brought up the issue of Jurisdiction. The respondent submits that this is a vacation and seasonal park that has cabins, recreational vehicles, and people that camp on the grounds. The respondent submits that this is a licence to occupy and that the *Manufactured Home Park Tenancy Act*

doesn't apply and that the Branch doesn't have jurisdiction to hear the matter. The applicants submit that the Branch does have jurisdiction because they have lived there for four years. The respondent testified that the tenants pay a daily fee plus GST. The respondent testified that either party can end the agreement at any time, that there are no permanent hookups for long term use, the respondent pays all the utilities, that visiting hours are imposed and that he has exclusive use to the entire park and does not need to give notice if he wishes to go on the site.

Analysis

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

A license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or "licensee", is given permission to use a site or property, but that permission may be revoked at any time. Under a tenancy agreement, the tenant is given exclusive possession of the site for a term, which can include month to month. The landlord may only enter the site with the consent of the tenant, or under the limited circumstances defined by the Manufactured Home Park Tenancy Act.

The Guideline also states the following:

Tenancies involving travel trailers and recreational vehicles

Although the Manufactured Home Park Tenancy Act defines manufactured homes in a way that might include recreational vehicles such as travel trailers, it is up to the party making an application under the Act to show that a tenancy agreement exists. In addition to any relevant considerations above, and although no one factor is determinative, the following factors would tend to support a finding that the arrangement is a license to occupy and not a tenancy agreement:

- The manufactured home is intended for recreational rather than residential use.
- The home is located in a campground or RV Park, not a Manufactured Home Park
- The property on which the manufactured home is located does not meet zoning requirements for a Manufactured Home Park.
- The rent is calculated on a daily basis, and G.S.T. is calculated on the rent.
- The property owner pays utilities such as cablevision and electricity.
 - There is no access to services and facilities usually provided in ordinary tenancies, e.g. frost-free water connections.
 - Visiting hours are imposed.

The respondent testified that there isn't a tenancy agreement and that all the above applies to this arrangement. The respondent testified that the fact that the tenancy has been in place for an extended time is due to COVID. The respondent testified that many people remained in the park over the past two years but that recently, more parties have begun to come and go as restrictions have been eased.

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 is a licence to occupy living arrangement rather than a tenancy with a tenancy agreement. The applicant has not provided sufficient evidence to establish that they are tenants living under a tenancy agreement and have further failed to provide sufficient evidence that the Manufactured Home Park Tenancy Act applies.

Conclusion

I decline jurisdiction over the applicant's application.

I make no determination on the merits of this application.

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: March 24, 2022

Residential Tenancy Branch