



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RPP

Introduction

This hearing was convened as a result of the Applicant's Application for Dispute Resolution (the "Application") under the *Residential Tenancy Act* (the "Act"), made on February 4, 2022. The Applicant applied for an order for the return of personal property as well as for a monetary order relating to compensation.

The Applicant, the Applicant's Advocate D.C., and the Respondent attended the hearing at the appointed date and time and provided affirmed testimony. The parties confirmed service and receipt of their respective Application and documentary evidence packages.

At the start of the hearing, the Applicant stated that she rented a trailer on the Respondent's property starting on August 1, 2021. The Applicant stated that she was not required to pay rent, instead, had an agreement with the respondent to conduct work on the property in lieu of rent. The Applicant stated that she was not required to pay a deposit and that the terms of her stay were all verbal. The Applicant stated that she was required to leave to property on or about February 6, 2022.

The Respondent stated that there is no tenancy. The Respondent stated that he was trying to help out the Applicant and permitted her to stay on his property with her trailer. At some point the Respondent permitted the Applicant to temporarily stay in a different trailer on the property for a couple months to help her out. The Respondent confirmed that no rent or deposit was collected and that he was acting out of good will. The Respondent stated that the City Bylaw attend the property and ordered that the Applicant move from the property.

Preliminary Matters - Jurisdiction

According to Section 2 of the MHPTA; the *Act* applies to tenancy agreements, manufactured home sites and manufactured home parks. A tenancy agreement under the MHPTA does not include a license to occupy.

The Manufactured Home Park Tenancy Act does not apply to an occupation of land that under the common law would be considered a license to occupy. A license to occupy is a living arrangement that is not a tenancy.

Section 1 of the *Manufactured Home Park Tenant Act* outlines definitions which are important to consider when determining if the *Act* applies to this situation.

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.

Section 2 of the Residential Tenancy Act stated that the *RTA* applies to tenancy agreements, rental units and other residential property.

The Residential Tenancy Policy Guideline #9 (the Guideline) clarifies the factors that distinguish a tenancy agreement from a licence to occupy. The Guideline states:

A licence 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. A licensee is not entitled to file an application under the Manufactured Home Park Tenancy Act.

The Guideline states that some of factors that may that may weigh against finding a tenancy are:

- Payment of a security deposit is not required.
- The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.
- The occupier pays property taxes and utilities but not a fixed amount for rent.
- The owner, or other person allowing occupancy, retains the right to enter the site without notice.
- The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.
- The parties have agreed that the occupier may be evicted without a reason, or may vacate without notice.

- The written contract suggests there was no intention that the provisions of the Manufactured Home Park Tenancy Act apply.

The Guideline also states: “*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.*”

I find that the Applicant has the onus to providing evidence to support the Application and I am assisted by the policy guidelines that states it is up to the party making an application under the Act to show that a tenancy agreement exists.

I find that the testimony of the Respondent supports that this is a licence to occupy living arrangement. The Applicant has provided insufficient evidence to establish that the living arrangement is a tenancy.

Based on the above facts, I find I do not have jurisdiction to hear this application. The parties should seek legal advice on which court or other forum may help them resolve this dispute.

Conclusion

I decline to proceed due to a lack of jurisdiction, and the Application is dismissed without leave to reapply. The parties should seek legal advice from their respective lawyers as to how to resolve this dispute.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 17, 2022

Residential Tenancy Branch