



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNL MNDCT OLC**

Introduction

This hearing was convened by conference call as a result of an application for dispute resolution (“Application”) made by the Applicant under the *Manufactured Home Park Tenancy Act* (the “Act”). The Applicant applied for:

- cancellation of a Two Month Notice to End Tenancy for Landlord’s Use of Property dated January 1, 2023; and
- an order for compensation or other money owed by the Landlord to the Tenant; and
- an order for the Landlord to comply with the Act, *Manufactured Home Park Tenancy Regulation* and/or the tenancy agreement.

The Applicant, the Respondent and the Respondent’s advocate attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure*. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Applicant stated he served the Respondent with the Notice of Dispute Resolution Proceeding and his evidence (“NDRP Package”) on the Respondent by registered mail on January 11, 2023. The Applicant provided the Canada Post tracking number for service of the NDRP Package on the Respondent. The Respondent denied receiving the NDRP Package. Notwithstanding the Respondent stated he did not receive the NDRP Package, the Respondent stated he wanted to proceed with the hearing. As such, I continued with the hearing.

The Respondent stated he served his evidence on the Applicant by two emails, dated April 23 and 25, 2023. Although there is no evidence the Tenant consented to service of documents under the Act by email, the Applicant admitted he received the Respondent's evidence. As such, I find the Respondent's evidence was sufficiently served pursuant to section 64(2)(b) of the Act.

Preliminary Matter – Jurisdiction of Residential Tenancy Branch

The Respondent stated he rented a shop, located at the address set out in the Application for the home site, to two persons ("Original Tenants") for commercial purposes. The Respondent stated the Applicant was an employee of the Original Tenants. The Respondent stated that the Applicant set up a yurt on the property to live in. The Respondent stated the Original Tenants did not tell him, or obtain his permission, for the Applicant to set up the yurt on the property.

The Respondent stated the Original Tenants vacated the shop on November 30, 2022 and the Applicant continued to live in the yurt without the Respondent's permission. The Respondent stated he had conversations with the Applicant about entering into a tenancy agreement. The Respondent stated he was unable to reach an agreement for a tenancy because the Applicant was unwilling to negotiate an amount to be paid for rent.

The Applicant did not dispute the Respondent's testimony. The Applicant stated he has never paid rent to the Respondent. The Applicant stated he was removing the yurt from, and vacating the property, on the day of this hearing. The Respondent stated he was aware the Applicant was vacating the property.

In this case, I find it is necessary to firstly consider whether I have jurisdiction to determine this dispute. Section 1 of the Act defines manufactured home, manufactured home park and manufactured home site, rent, tenancy and tenancy agreement as follows:

"manufactured home" means a structure, other than a float home, whether or not ordinarily equipped with wheels, that is

- (a) designed, constructed or manufactured to be moved from one place to another by being towed or carried, and
- (b) used or intended to be used as living accommodation;

"manufactured home park" means the parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located;

"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;

"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a manufactured home site, for the use of common areas and for services or facilities, but does not include a fee prescribed under section 89 (2)

(k) *[regulations in relation to fees]*;

"tenancy" means a tenant's right to possession of a manufactured home site under a tenancy agreement;

"tenancy agreement" means 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;

Section 2 of the Act states as follows:

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.

I find there is insufficient evidence to suggest that there was any express or implied tenancy agreement between the Applicant and the Respondent respecting a tenancy on the property nor what the terms of that agreement might have been. In order for there to be an enforceable contract, there must be an agreement of the parties, or *consensus ad idem*, a "meeting of the minds" as to the terms of the agreement. I find that an essential element of a tenancy agreement is that the tenant of a manufactured home site agrees to pay rent to the landlord for the right to occupy the home site. The Respondent stated that no agreement could be reached on the amount of rent to be paid by the Applicant and the Applicant

acknowledged he has never paid any rent to the Respondent. As such, I am unable to conclude that there was a tenancy agreement, whether express or implied, between the Applicant and Respondent respecting a right of the Applicant to occupy a manufactured home site.

Based on the foregoing, I am unable to find a tenancy existed that gave the Applicant the right to possess a manufactured home site under a tenancy agreement with the Respondent. In the absence of any tenancy agreement between the Applicant and the Respondent, I conclude that the Act does not apply in these circumstances.

My authority is only with the Act, and since the Act does not apply, I decline jurisdiction to hear and decide any matters relating to this dispute.

Conclusion

For the reasons set out above, I decline jurisdiction to hear the Application. The Application is dismissed in its entirety without leave to reapply.

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: May 6, 2023

Residential Tenancy Branch