

9. Tenancy Agreements and Licences to Occupy

This policy guideline is intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This policy guideline may be revised and new guidelines issued from time to time.

This policy guideline clarifies the factors that distinguish a tenancy agreement from a licence to occupy.

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. 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.

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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.

Some factors that may help distinguish a tenancy agreement from a licence to occupy are discussed below. No single factor is determinative.

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.

See also: *Wiebe v Olsen*, 2019 BCSC 1740.

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;

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- 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.

Other factors

Other factors that may distinguish a tenancy agreement from a licence to occupy include:

- payment of a security deposit;
- the parties have a family or personal relationship, and occupancy is given because of generosity rather than business considerations.

An arbitrator will weigh all the factors for and against finding that a tenancy exists.

PROPERTY ZONING

In *Powell v. British Columbia (Residential Tenancy Branch)*, 2016 BCSC 1835, the Court held that municipal zoning may be relevant in that could inform the nature of the legal relationship between an owner and occupier. While zoning may inform this question, it is the actual use and nature of the agreement between the owner and occupier that determines whether there is a tenancy agreement or licence to occupy.

The fact that the landlord is not in compliance with local bylaws does not invalidate a tenancy agreement. An arbitrator may find that a tenancy agreement exists under the MHPTA, even if the property the rental pad is on is not zoned for use as a manufactured home park. As the Court pointed out in *Wiebe v Olsen*, 2019 BCSC 1740, “there is no statutory requirement that a landlord’s property meet zoning requirements of a manufactured home park in order to fall within the purview of the MHPTA.”

See also: [Policy Guideline 27: Jurisdiction](#)

D. RENTING A SITE WITHOUT A MANUFACTURED HOME

A tenancy agreement may exist when a landlord and tenant enter into a tenancy agreement for a manufactured home site that the tenant is entitled to bring a manufactured home to. This tenancy agreement may be binding even if there is no home on the site.

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CHANGES TO POLICY GUIDELINE

Section	Change	Notes	Effective Date
All	new	Added section numbers for clarity	Dec-2017
B - D	am	Revised for clarity	Dec-2017
All	new	Guideline rewritten	May-2020

Change notations

am = text amended or changed

del = text deleted

new = new section added