

14. Type of Tenancy: Commercial or Residential

Jan-04

This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also 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 Guideline may be revised and new Guidelines issued from time to time.

Generally

Neither the *Residential Tenancy Act* nor the *Manufactured Home Park Tenancy Act* applies to a commercial tenancy. Commercial tenancies are usually those associated with a business operation like a store or an office. If an arbitrator determines that the tenancy in question in arbitration is a commercial one, the arbitrator will decline to proceed due to a lack of jurisdiction. For more information about an arbitrator's jurisdiction generally, see Policy Guideline 27 - "Jurisdiction."

Sometimes a tenant will use a residence for business purposes or will live in a premises covered by a commercial tenancy agreement. The *Residential Tenancy Act* provides that the *Act* does not apply to "living accommodation included with premises that (i) are primarily occupied for business purposes, and (ii) are rented under a single agreement."¹

To determine whether the premises are primarily occupied for business purposes or not, an arbitrator will consider what the "predominant purpose" of the use of the premises is.² Some factors used in that consideration are: relative square footage of the business use compared to the residential use, employee and client presence at the premises, and visible evidence of the business use being carried on at the premises.³

The *Manufactured Home Park Tenancy Act* applies to manufactured home sites, the parks in which the sites are located and the tenancy agreements governing them. A "manufactured home site" is defined in that *Act* as a site rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home.⁴ The *Act* defines a "manufactured home" as, among other things, a structure used or intended to be used as living accommodation.⁵ A rental or tenancy relationship over land onto which a manufactured structure is brought or intended to be brought, will be outside the scope of the *Manufactured Home Park Tenancy Act* unless it is within those definitions.

Tenancies Established for the Purpose of Re-renting

Sometimes a tenant will rent out a number of rental units or manufactured home sites and re-rent them to different tenants. It has been argued that there is a "commercial tenancy" between the landlord and the "head tenant" and that an Arbitrator has no jurisdiction. This generally occurs in a manufactured home park.

¹ *Residential Tenancy Act*, s. 4(d)

² See for example, *Re: Hahn and Kramer* (1979), 97 D.L.R. (3d) 141 (Ont. Div. Ct.).

³ *Tanasiuk*, ARP File No. 9602 - 131.

⁴ *Manufactured Home Park Tenancy Act*, s. 1

⁵ *MHPTA*, s. 1

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The courts in BC⁶ have indicated that these relationships will usually be governed by the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act*. It is the nature or type of property that is regulated by the legislation. If the type of property comes within the definitions in the legislation and does not fall within any of the exceptions in the legislation, the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* will govern.

⁶ See *Henricks, et al. v. Hebert, et al.*, (B.C.S.C.) Oct. 22, 1998, Prince George Reg. No. 02572. *Blue Rentals Ltd. v. Hilbig et al.* (B.C.S.C.) Feb. 1, 1999, Terrace Reg. No. 10656.