

## **DECISION**

Dispute Codes      OPR, MNR, CNR, MNR, OPT, AAT, LAT FF

### Introduction

This hearing dealt with applications filed by both parties to the dispute seeking remedy under the *Residential Tenancy Act*.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I note both parties submitted evidence late in this matter, which I have reviewed. I have also reviewed all other oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues(s) to be Decided

Is either party entitled to an Order of Possession under either section 54 or 55 of the *Residential Tenancy Act*?

Is either party entitled to a Monetary Order under section 67 of the *Residential Tenancy Act*?

Is either party entitled to relief under the *Residential Tenancy Act*?

### Background and Evidence

The parties are in dispute as to whether there is a tenancy agreement or a rent-to-own agreement.

The Owner runs a resort/mobile home facility whereby he rents out certain manufactured homes and manufactured home sites, among other things.

The Owner testified that the property in question was a manufactured home and manufactured home site. The Owner further testified that the agreement in question was a rental agreement and that the occupant owed for unpaid rent. The Owner further testified that there was no written tenancy agreement, no collection of a security deposit, no move-in condition inspection report and no accounting for the collection of alleged unpaid rent.

The Owner testified that he posted the 10 Day Notice to End Tenancy on the door of the property in question while acknowledging he knew the Occupant was not on the premises.

When queried, the Owner acknowledged that he had rental properties for which he had written tenancy agreements, as well as security deposits. The Owner further admitted that he did not possess any keys for the property in question.

The Occupant testified that the agreement in question was a rent to own, that he had agreed to pay \$600.00 per month, of which \$346.28 was to be applied to the Owner's mortgage on the property, in return for the Owner conveying ownership when the Occupant could arrange financing.

The Occupant further testified that he was approached by one of the witnesses for the Owner, who brokered the rent to own agreement, and that it was made clear his payments were to be applied to the mortgage for future ownership.

The Occupant further testified that the Owner did not provide any "Landlord" services and that he, the Occupant, had to pay to repair the property in question when there was a need. The Occupant testified that the Owner did not have a key to the property, in support of his claim that this was a rent to own agreement.

The Occupant further testified that he was also an employee for the Owner's resort property and that the rent to own agreement was never in question until the Occupant was forced to resign his employment.

In response, when queried, the Owner admitted that the Notice to End Tenancy was issued within 2 days of the resignation and that he entered the property in question through a window without permission, shortly after issuing the Notice.

I note that the Notice to End Tenancy contained invalid effective dates and it appeared to have been altered by the issuer.

Analysis

The definition of a tenancy agreement under part 1 of the Act means 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.

In this case the evidence supports that the agreement entered into by the parties was a rent to own, and therefore, the *Residential Tenancy Act* does not apply, thus I decline jurisdiction in this matter.

Conclusion

I HEREBY DISMISS these matters for want of jurisdiction.

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: October 04, 2010.

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Dispute Resolution Officer