



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes CNL, MT, FF

### Introduction

This hearing was scheduled to deal with a tenant's Application for Dispute Resolution to cancel a Notice to End Tenancy for Landlord's Use of Property and more time to make the application. The respondent did not appear at the hearing. The applicants provided a registered mail tracking number as proof the hearing documents were sent to the respondent on November 23, 2011. The applicants submitted that a search of the tracking number showed that the registered mail was unclaimed by the respondent. I was satisfied the respondent was sufficiently notified of this proceeding and I proceeded to hear from the applicants without the respondent present.

### Preliminary matters

In filing this Application for Dispute Resolution the applicants indicated this application was being made under the *Manufactured Home Park Tenancy Act*, however, I determined the Notice to End Tenancy that was served upon the applicants is an approved form under the *Residential Tenancy Act* only. Accordingly, I amended the application to reflect the *Residential Tenancy Act* (herein referred to as the Act).

Upon hearing from the applicants I also determined it necessary to further consider whether the Act applies to the agreement between the applicants and the respondent.

### Issue(s) to be Decided

Does the *Residential Tenancy Act* apply to the parties and do I have jurisdiction to resolve this dispute?

### Background and Evidence

The applicants submitted that on April 2, 2006 the parties agreed that the applicants would pay \$400.00 to the respondent for 75 months and that after the 75 payments were made the applicants would own the trailer and the land on which it is located.

The applicants testified that the trailer is not located in a manufactured home park. Rather, the trailer is on property that belonged to the respondent's deceased father. The applicants are of the belief that the respondent has a full or partial ownership interest in the land on which the trailer is located.

In November 2011 the applicants received a 2 Month Notice to End Tenancy for Landlord's Use of Property under the *Residential Tenancy Act*. The applicants filed this Application for Dispute Resolution to dispute the Notice.

The applicants provided a copy of the agreement signed by the parties on April 2, 2006; a copy of the Notice to End Tenancy; and copies of several deposit slips showing payments of \$400.00.

### Analysis

In order for a landlord to end a tenancy using a form approved by the Director under the Act, I must be satisfied the Act applies to the agreement between the parties.

Residential Tenancy Policy Guideline 27: *Jurisdiction* provides for the following interpretation of the intent of the *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act* (the Acts). Under the heading Excluded Jurisdiction it provides, in part,:

#### **5. TRANSFER OF AN OWNERSHIP INTEREST**

If the relationship between the parties is that of seller and purchaser of real estate, the Legislation would not apply as the parties have not entered into a "Tenancy Agreement" as defined in section 1 of the Acts. It does not matter if the parties have called the agreement a tenancy agreement. If the monies that are changing hands are part of the purchase price, a tenancy agreement has not been entered into.

Similarly, a tenancy agreement is a transfer of an interest in land and buildings, or a license. The interest that is transferred, under section 1 of the Acts, is the right to possession of the residential premises. If the tenant takes an interest in the land and buildings which is higher than the right to possession, such as part ownership of the premises, then a tenancy agreement may not have been entered into. In such a case the arbitrator may again decline jurisdiction because the Acts would not apply.

The agreement signed April 2, 2006 is entitled "Rental Purchase Agreement" and appears to have been prepared by one of the parties. The agreement lacks information and terms required of a tenancy agreement or what one would expect with a document involving an ownership interest in land. However, the agreement includes the following statements which are inconsistent with a tenancy agreement:

- "if something happens and the trailer is destroyed it is agreed that [the applicants] would still be accountable for the payout of this agreement"; and,
- "any repairs that are needed to the property during the time of this agreement, [the applicants] are responsible for the cost."

While the above terms are not sufficient to find the applicants have or will have an ownership interest in land, the agreement does not contradict the applicant's assertion that their payments are for the purchase of the land and trailer.

In the absence of evidence or submissions from the respondent, I accept the applicants' submission that they have been paying for an ownership interest in land. Since the Act does not apply to agreements where the interest in land is more than use and occupancy under a tenancy agreement I find the Act does not apply to the agreement between the parties and I do not have jurisdiction to resolve this dispute.

Where the Act does not apply to an agreement the agreement cannot be ended under the Act, thus, the Notice to End Tenancy is of no effect and is not enforceable under the Act.

### Conclusion

I was not satisfied the Act applies to the agreement between the parties and I have declined to find jurisdiction in this matter. Where an agreement does not fall under the jurisdiction of the Act the agreement cannot be ended under the Act, thus, a Notice issued under the Act would not be valid or enforceable.

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: December 08, 2011.

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Residential Tenancy Branch