



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord only. As this hearing was convened based on the tenants' Application I am satisfied that they were sufficiently notified of this hearing.

During the hearing, the landlord verbally requested an order of possession should the tenants be unsuccessful in their Application.

The landlord submitted in his documentary evidence and his testimony at the start of the hearing that the tenants entered into the tenancy agreement under fraudulent circumstances. The landlord testified the tenancy agreement states under Section 10 that at least one of the parties named in the tenancy agreement must be a registered owner of the manufactured home.

The landlord submits that the Application for Tenancy, under Section I, states "...I/We will provide proof of ownership of the manufactured home by submitting a copy of the Manufactured Home Registry transfer of ownership form as per Section 5 or 7 of the *Manufactured Home Act*." Further, the landlord submits that Section K states "I/We agree that if this Application is accepted and I/we fail to provide proof of ownership, or fail to enter into or proceed with any of the agreements listed above, no tenancy exists.

I accept the landlord's position that once the tenants signed the tenancy agreement they were bound to perform the contract under the provisions of the agreement and the *Manufactured Home Park Tenancy Act (Act)*. If the tenants had provided proof of transfer of ownership, the landlord could not have refused to perform the tenancy agreement or damages would have arisen to the tenant.

I find that the landlord relied on the representations made by the tenants that they owned the manufactured home before they moved in and this led them to enter into the tenancy agreement.

I find that the tenants breached the tenancy agreement by failing to provide confirmation of the transfer of ownership of the manufactured home, at any time from the start of the tenancy to the current date.

I find that by failing to provide the transfer of ownership documents, it was unequivocal that the tenants had refused to perform their obligations under the tenancy agreement. I further find that the unequivocal refusal of the tenants to perform their contractual obligation was tantamount to the frustration of the tenancy agreement, through no fault of the landlord.

As such, I find, based on the landlord's undisputed testimony, that no tenancy exists and the named parties in this Application are not tenants with any protections under the *Act*.

Issues to be Determined

The issues to be decided are whether the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 39 of the *Act*.

If the tenants are unsuccessful in their Application seeking to cancel the 10 Day Notice for Unpaid Rent it must be decided if the landlord is entitled to an order of possession, pursuant to Section 48 of the *Act*.

Conclusion

For the reasons noted above, I decline jurisdiction over the matters brought forward under the tenant's Application. As I have declined jurisdiction in the tenant's Application, I must also decline jurisdiction in the landlord's verbal request for an order of possession.

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 07, 2012.

Residential Tenancy Branch