



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC

Introduction

This hearing was convened by way of conference call in response to this application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

Service of the hearing documents, by the applicant to the respondent, was done in accordance with section 89 of the *Act*, sent via registered mail on June 13, 2012. Mail receipt numbers were provided in the applicant's documentary evidence. The respondent was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The applicant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the respondent, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Is the applicant entitled to a Monetary Order for unpaid rent?
- Is the applicant entitled to an Order of Possession for unpaid rent?
- Is the applicant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The applicant testifies that the rent to own agreement or lease agreement was signed on April 22, 2011 with a May 01, 2011 possession date. The respondent paid a down payment of \$2,500.00. The agreement in place is a rent to own contract between the parties. The agreement was for the respondent to pay \$500.00 per month until the purchase price of \$10,900.00 for the trailer was met. The rent to own contract states that for every month the respondent pays on time a credit of \$400.00 will be offset against the purchase price.

The applicant testifies that the respondent failed to meet the requirements for this agreement and failed to pay all the rent for March, 2012 leaving an unpaid balance of \$30.00. The respondent has since failed to pay any rent for April, May, June and July, 2012. The applicant seeks a Monetary Order to recover the unpaid rent of \$2,030.00. The applicant also testifies that the respondent has failed to pay the pad rent for June and July, 2012 of \$480.00 which the applicant has had to pay to the mobile home park.

The applicant seeks an Order of Possession effective as soon as possible.

The matter of jurisdiction in this matter was discussed at length.

Analysis

I have considered this application and whether or not I have jurisdiction in this matter. I refer the parties to the Residential Tenancy Policy Guidelines # 27 which deals with the matter of jurisdiction and states:

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 RTB may again decline jurisdiction because the Acts would not apply.

In the case of a tenancy agreement with a right to purchase, the issue of jurisdiction will turn on the construction of the agreement. If the agreement meets either of the tests outlined above, then the Acts may not apply. However, if the parties intended a tenancy to exist prior to the exercise of the right to purchase, and the right was not exercised, and the monies which were paid were not paid towards the purchase price, then the Acts may apply and the RTB may assume jurisdiction. Generally speaking, the Acts apply until the relationship of the parties has changed from landlord and tenant to seller and purchaser.

I find that the respondent paid a down payment of \$2,500.00 on the purchase price at the start of the agreement. The agreement also states that for every month the respondent paid on time a credit of \$400.00 would be applied to the purchase price. The applicant considers this agreement to be a lease agreement that falls under the scope of a tenancy agreement however I find it is a rent to own agreement where some of the monies changing hands are part of the purchase price.

Therefore I decline jurisdiction in this matter and the applicant is at liberty to seek resolution in an alternative legal forum.

Conclusion

As no tenancy agreement has been established between these Parties I decline jurisdiction in this matter and the application is dismissed.

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: July 04, 2012.

Residential Tenancy Branch