

## DECISION

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This is an application filed by the Landlord for an order of possession and a monetary order for unpaid rent, for money owed or compensation for damage or loss and the recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Tenant did not submit any documentary evidence. As both parties have attended the hearing and have acknowledged receiving the notice of hearing and evidence submitted, I am satisfied that both parties have been properly served.

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order?

### Background, Evidence and Analysis

The Landlord has provided a copy of a "Rental Purchase Agreement" dated October 16, 2011 and signed by both parties, that states, "I Lilly French agree to Rent to purchase one 1976, Atco Velaire, Manufactured Home Registration #60935, as is, for \$759.00 per month for 35 months, the cost of the said Manufactured Home is \$18,000.00. The pad rent is \$259.00 per month, the pad rent is included in the \$759.00 per month, leaving a balance of \$500.00 going towards the payment of said Manufactured Home. The non refundable security deposit/down payment of \$500.00 is included in the price of said Manufactured Home. At the end of the 35 month period. Provided all rent, late charges and NSF fees are paid and or up to date. Should you pay for the said Manufactured Home before February 1, 2012 the purchase price will be \$15,000.00. The Manufactured home can be paid of after February 1, 2012 date for \$18,000.00."

Residential Tenancy Policy Guideline #27, Part 5 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 parties are in fact a seller and a purchaser as the “Rental Purchase Agreement” clearly states. Neither party has disputed this relationship. The Manufactured Home was being purchased and the monthly payments between the two parties were for the purchase of the Manufactured Home and entitled the respondent to a right of possession/interest as indicated in a handwritten notation on the agreement that the “owner cannot rent, sell or lease said manufactured home without approval from Lilly French”. As this is a purchase agreement and not a Tenancy, I decline to hear the Landlord's application.

### Conclusion

The Application is declined for 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: August 10, 2012.

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Residential Tenancy Branch