



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This matter proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 15, 2013, the landlord served the tenants with the Notice of Direct Request Proceeding via registered mail.

Section 90 of the Act determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the landlord, I find that the tenants have been duly served with the Direct Request Proceeding documents.

### Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding;
- A copy of a residential tenancy agreement which was signed by the parties on October 22, 2012 indicating that the tenant is obligated to pay \$1,375.00 in rent in advance on the first day of the month and that a “1992 Terry Travel Trailer” was paid as the security deposit;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which the landlord served on the tenant on April 5, 2013 for \$1,375.00 in unpaid rent due on April 1, 2013.
- A copy of the Proof of Service of the Notice to End Tenancy showing that the landlord served the notice to end tenancy on the tenant by personal service on April 5, 2013 with a witness
- A copy of a "Landlord and Tenant Clauses" which states in #1 that "This is a rent to own agreement with a contract of 1 yr starting on November 1, 2012 ending November 1, 2013, at which time the tenants will purchase the property for \$239,000.00..., #2 Tenants have transferred ownership of their 1992 Terry Travel Trailer over to us a deposit, until either a \$5,000.00 cash deposit is received to us, or the Tenants have purchased the home outright..."

The Notice restates section 46(4) of the Act which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

### Analysis

I have reviewed all documentary evidence submitted by the landlord and am not satisfied with the request for an order of possession and a monetary claim for unpaid rent of \$1,375.00 from this direct request and the 10 day notice to end tenancy for unpaid rent. On the "Landlord and Tenant Clauses" it clearly shows that "This is a rent to own agreement" and that a security deposit of a "1992 Terry Travel Trailer was paid as a deposit. I cannot be certain as to the \$5,000.00 deposit/ transfer of ownership of a 1992 Terry Travel Trailer was a transfer of ownership/interest between the two parties as insufficient evidence has been submitted to explain this discrepancy.

Residential Tenancy Branch Policy Guideline #5 states,

### **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 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 landlords have not met the onus placed on them of supplying documents that would prove that there was no transfer of ownership/interest. I find that I am unable to consider their application for an order of possession and a monetary award against the tenants by way of a Direct Request proceeding.

Under these circumstances, with this discrepancy that requires more information, I adjourn this application to be reconvened as a participatory hearing.

A Notice of Hearing Document is attached for each party. **The Applicant is responsible for serving the Respondent with the Notice of Hearing and must provide to the Respondent copies of the relevant information and/or documents to which he/she may refer at the hearing.** The Applicant should be prepared to give evidence of service at the hearing.

Failure to attend the hearing at the scheduled time, with all relevant documents and/or witnesses, will result in a decision being made on the basis of any information before the dispute resolution officer and the testimony of the party in attendance at the hearing.

### Conclusion

I adjourn the landlords' direct request application for an Order of Possession and a monetary Order to be reconvened at a participatory hearing.

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: April 16, 2013

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Residential Tenancy Branch

