



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, OPR, MNR

### Introduction and Preliminary Issue

This hearing dealt with the landlords' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and unpaid rent, an order of possession for the rental unit due to unpaid rent, and for recovery of the filing fee.

The parties appeared and the issue of jurisdiction was discussed, due to the written submissions of the tenants.

### Issue(s) to be Decided

Does the Residential Tenancy Act apply to this dispute?

If so, are the landlords entitled to an order of possession for the rental unit due to unpaid rent and monetary compensation?

### Background and Evidence

Both parties submitted a written document entitled "Residential Lease with Option to Purchase."

The written agreement shows, and the parties confirmed, that the tenants/respondents (hereafter "respondents"), upon execution of the agreement, paid the landlords (hereafter "applicants") a sum of \$5000, as a down payment towards the purchase of the home in question. I note that the home in question is a manufactured home on a manufactured home site.

The undisputed evidence further shows that the respondents pay the applicants the amount of \$821 per month, with \$500 of that amount going towards the purchase price of the manufactured home, and the balance towards pad rent.

Further the parties both agreed that the respondents are obligated to pay for all repairs to the home in question.

### Analysis and Conclusion

Before proceeding to examine and consider the merits of the landlords' application, I must determine whether this application is under the jurisdiction of the *Residential Tenancy Act*. The legislation does not confer authority to consider disputes between all types of relationships between parties. Only relationships between landlords and tenants can be determined under the *Act*.

In this case, the parties entered into a Lease with an Option to Purchase on March 9, 2013. Filed in evidence is a copy of that document.

*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:

#### **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.

I find in this case, the parties did not enter into a tenancy agreement as set out in 13(1) of the Act and the Residential Tenancy Act does not have jurisdiction where the interest of the tenant in the property appears to be greater than the right to possess, as is the case here where the respondents have acquired an ownership interest as a part of their payments.

I additionally considered that the respondents were required under the terms of their agreement to make repairs to the home in question, which is not required of tenants under the Act.

Therefore, I decline to find jurisdiction to resolve this dispute.

The parties are at liberty to seek the appropriate legal remedy to this dispute.

### Conclusion

I do not find the *Residential Tenancy Act* applies to this dispute and I have declined 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: October 02, 2013

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Residential Tenancy Branch