



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ENERSHARE INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD FF
 CNR O FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The owner of E.I.L., hereinafter referred to as the Owner, filed his application on February 27, 2015, under the Residential Tenancy Act (RTA). A.M. filed her application on February 20, 2015 the Manufactured Home Park Tenancy Act (MHPTA).

The hearing was conducted via teleconference and was attended by the Owner, A.M., A.M.'s Advocate (the Advocate) and A.M.'s daughter, (the Witness). Each party gave affirmed testimony and confirmed receipt of evidence served by each other.

At the outset of the hearing the parties confirmed that on February 7, 2007, they had entered into two agreements simultaneously, a tenancy agreement and an Option to Purchase Agreement. Those agreements were provided in each party's evidence package. As such, I advised the parties that I would hear their submissions regarding jurisdiction to determine if these matters fell under either the RTA or the MHPTA. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Does this matter fall under the jurisdiction of either the RTA or the MHPTA?

Background and Evidence

The Owner testified that A.M. entered into the agreement to purchase his manufactured home, paying him a \$1,000.00 non-refundable deposit, as per section 3.01 (i) of the Offer to Purchase Agreement.

The Owner submitted that tenancy agreement and the Offer to Purchase Agreement stipulated that the Tenant was required to pay rent of \$675.00 on the first of each month. Section 4.01 of the Offer to Purchase Agreement stipulated:

- (i) *The Grantor covenants to credit the total deposit paid, plus \$185.00 per month from the rental payments of \$675.00 per month made by the Grantee, toward payment of the total price during the first 18 months of tenancy.*
- (ii) *The Grantor further covenants to credit the tenant \$195.00 per month from the rental payments of \$685.00 per month made by the Grantee toward payment of the total purchase price during the final 18 months of tenancy.*

The Owner submitted that the Offer to Purchase Agreement section # 1 provided a time period for when A.M. could exercise her right to purchase the manufactured home. He argued that when A.M. failed to exercise her right to purchase the manufactured home on or before March 6, 2010, the option to purchase was no longer available to A.M. and their agreement reverted to a regular tenancy agreement. He pointed to section 2.01 of the Offer to Purchase Agreement which states:

The Option may be exercised by the Grantee giving written notice to the Grantor of its intention to exercise the option at any time on or before the 06 day of March, 2010.

The Owner submitted that he was of the opinion that he retained full ownership of the manufactured home and that A.M. was occupying his home as a tenant. Therefore, this matter fell under the RTA.

A.M. testified that it has always been her understanding that she was buying the manufactured home. She argued that whenever she spoke to the Owner about needing repairs to the manufactured home he always made her understand that she was responsible to make the repairs because she would eventually own the home. She stated that the Owner told her it would take her 6 years to own the home and recently she began to question the Owner as to when she would own the home, because she has lived in it for over seven years.

A.M. asserted that the Owner explained parts of the agreement that he had her sign, but he never explained there was a time limit when she had to tell him she wanted to buy the manufactured home. She stated that the Owner did not contact her to ask if she still intended to buy home; rather, he constantly told her she had to repair it because she was buying it.

The Witness testified that she was with A.M. at the time the tenancy agreement and Option to Purchase Agreement were signed, and she does not recall the Owner explaining the limited time period in which the option to purchase would expire. The Witness confirmed that she initialled the agreement, with A.M. and the Owner in different sections of the Option to Purchase Agreement, as per the Owner's directions.

The Witness submitted that she spoke with the Owner throughout the tenancy requesting repairs. Each time she requested the repairs the Owner said there was nothing he could or would do about it because they had signed the rental and offer to purchase agreements, so A.M. was responsible for the repairs.

The Witness stated that it was not until the beginning of February 2015, when the Owner told her that A.M. was not going to own the manufactured home and that the Owner was going to evict them. A 10 Day Notice was served to them on February 11, 2015.

The Advocate submitted that when A.M. and the Witness first sought her assistance, they were both of the opinion that they had been paying to purchase the manufactured home. The Advocate stated that it was not until she reviewed the Offer to Purchase Agreement with her supervisor, that they determined there was a time restriction to exercise the option to purchase. She stated that they then informed A.M. and the Witness they were tenants and assisted A.M. in filing her application with the Residential Tenancy Branch.

The Owner submitted that the Offer to Purchase Agreement was created by his lawyer, at the Owner's request. He argued that he explained the Offer to Purchase Agreement with A.M. and the Witness. He submitted that he made it clear to them that it was no longer an offer to purchase. He asserted that their conversations were about non-payment of rent and that the only repair request that he said was their responsibility was when they asked him to repair the cupboards.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 1 of the RTA provides that a tenancy agreement means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 1 of the MHPTA provides that a tenancy agreement means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities.

The Residential Tenancy Policy Guideline # 27 stipulates that 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 both 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.*** [My emphasis added].

The Offer to Purchase Agreement section 4.01 (i) stipulates that the deposit plus \$185.00 of the monthly rent is credited toward the payment of the total price during the first 18 months and 4.01 (ii) stipulates that \$195.00 of the monthly rent is a credit to the tenant toward payment of the total purchase price during the final 18 months. In addition, I note that there is no clause in the agreement that would explain the obligations of each party or the disbursement of the monies listed in 4.01(i) and 4.01 (ii) if the option to purchase was not exercised.

In common law there is a doctrine of *contra proferentem* which means giving the benefit of any doubt in favor of the party upon whom the contract was foisted. In plain language this means that the benefit of doubt goes to the person who did not construct the contract.

Upon review of the Offer to Purchase Agreement, I accept that the agreement included a time period to exercise the agreement listed in section 2.01. That being said, I note that there are no initials written at or beside section 2.01, which could support an argument that the time limit clause had been discussed and understood by all parties.

There are however, several other sections of this agreement where the Owner directed A.M. and the Witness to initial.

The Option to Purchase Agreement was constructed by the Owner's lawyer and was presented by the Owner to A.M. At the time A.M. and the Witness sought the Advocate's assistance in February 2015, they were both still of the understanding that they were purchasing the manufactured home, based on the agreement they had signed and the Owner's continued refusal to conduct repairs because they were purchasing the home. Therefore, I lend the benefit of doubt to A.M.

Based on all of the above, I find there to be insufficient evidence to prove that this matter was a tenancy under either the RTA or the MHPTA. Rather, I find there to be evidence that the relationship of the parties to this dispute were that of seller and purchaser of the manufactured home. Accordingly, I declined to hear these matters, for want of jurisdiction. Each party is at liberty to seek remedy through the Court with proper jurisdiction.

Conclusion

I HEREBY DISMISS both applications, without leave to reapply, for want of 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* and Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: March 25, 2015

Residential Tenancy Branch

