



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MT, MNSD FF

Introduction

This hearing was scheduled in response to the tenant's application for dispute resolution. The tenants have requested more time to cancel and Notice ending tenancy received on March 2, 2015 and return of the security deposit in the sum of \$2,700.00 plus recovery of the filing fee cost.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided

Preliminary Matter – Jurisdiction

The tenants stated that they were not requesting return of a deposit but return of the funds that they had paid to the landlord to date. The application was made under the Manufactured Home Park Tenancy Act.

The tenants submitted a copy of a "Lease Purchase Agreement" signed by the parties on February 4, 2015. The agreement indicated that it was made effective January 2015; a day of the month was not indicated.

This agreement set out a clause called Lease Rent which provides, in part:

"Tenant shall pay as rent the sum of \$1100.00 per month (\$900 rental and \$200 will go to the purchase price of \$29,000) not including any utilities, due and payable monthly on the first day of the month..."

(Reproduced as written)

The Agreement required the tenants to obtain home owners insurance after the first year and to pay the property taxes.

The parties agreed that the tenants were purchasing the manufactured home that is owned by the landlord. The landlord is the Park manager. The landlord would then apply \$355.00 of the payments to the site rental due to the Park. Of the monthly payment \$200.00 would be applied to the purchase of the home and the balance owed each month would be accepted as a home rent payment to the landlord.

When questioned, the landlord confirmed that the tenants were both renting the home and purchasing the home. The tenants did not pay any site rent directly to the Park.

The tenants said this was a “rent to own” agreement.

Analysis

Residential Tenancy Branch (RTB) policy suggests that if the relationship between the parties is that of a seller and purchaser of real estate the legislation would not apply as the relationship would not meet the definition of tenancy agreement.

The Manufactured Home Park Tenancy Act defines tenancy agreement as:

*“**“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 Act defines tenancy agreement as:

*“**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”*

From the evidence before me I find that the parties have co-mingled a tenancy agreement for rent of the manufactured home, which would fall under the Residential Tenancy Act, and a purchase agreement for that home. The tenants do not directly pay site rent to the Park; this paid by the landlord. Therefore, I find that the landlord is actually a tenant of the Park; bound by the Manufactured Home Tenancy Park Act. There was no evidence before me that a tenancy existed prior to the signing of the “Lease Purchase Agreement.”

As the owner of the manufactured home I find the landlord has entered into a purchase agreement with the tenants where she accepts money toward both rent and purchase. As the parties have co-mingled a tenancy and purchase I find that the landlord has entered into a tenancy agreement that confers more than the right to occupy.

As suggested by RTB policy, if the money that is changing hands is part of a purchase price then a tenancy agreement has not been entered into. Neither party disputed that

the agreement was anything other than a tenancy and purchase agreement.

I find, on the balance of probabilities, that the agreement made between the parties is a purchase agreement. The agreement exceeds that contemplated by the tenancy agreement definitions included in the legislation. Therefore, as the agreement between the parties does not meet the definition of tenancy agreement defined by either the Manufactured Home Tenancy Park Act or the Residential Tenancy Act, I decline jurisdiction. I have considered both Acts, given the co-mingling of the agreement made between the parties.

As jurisdiction is declined neither party may rely upon remedies available under the tenancy legislation, such as a Notice to end tenancy.

Conclusion

Jurisdiction is declined.

This decision is final and binding and 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 *Residential Tenancy Act*.

Dated: April 16, 2015

Residential Tenancy Branch

