



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF (Landlord's Application)
 CNR (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") made by both the Landlord and the Tenant under the *Manufactured Home Park Tenancy Act*. The Tenant applied to cancel the notice to end tenancy for unpaid rent. The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee.

The Landlord and Tenant both appeared for the hearing along with their common law wives. The parties all provided affirmed testimony and both parties also provided documentary evidence prior to the hearing.

Preliminary Jurisdictional Issues

The Tenant's Application disclosed an issue of jurisdiction, namely that the Tenant submits that this is a rent to own situation and is therefore not covered by the *Manufactured Home Park Tenancy Act*. As a result, I invited the parties to first provide testimony and submissions in relation to the question of jurisdiction in this matter.

The Tenant testified that before December 2009 he engaged into a verbal contract with the Landlord for rent to purchase the Landlord's mobile home. The Tenant testified that he owned a fifth wheel vehicle which he gave to the Landlord for \$5,000.00 as a down payment for the mobile home. The Tenant took possession of the mobile home at the end of December 2009. The Tenant stated that the mortgage payment each month was \$1,270.00 over a ten year period and that this was payable on the first day of each month; however, at some point during the tenancy which the Tenant was unable to recall, payments of \$600.00 were being made on the first of each month and the remainder \$670.00 was being paid in the middle of the month as authorised by the Landlord. The Tenant testified that the mortgage payment included property taxes but he paid utilities separately.

The Tenant's wife submitted that they had performed a number of repairs to the mobile home, including the installation of new carpets, rebuilding the deck, flooring, painting and installation of major appliances. The Tenant submitted three invoices relating to the rebuilding of the deck, the sale of a black gas stove, and a painting invoice.

When the Tenant was asked about the mortgage payments that were made, the Tenant's wife testified that for the first two years they paid the Landlord cash for which they did not get any receipts for. The Tenant confirmed that there was no rent to purchase agreement that was signed by the parties but neither was there a written tenancy agreement.

The Tenant's wife testified that during the period of 2012 to 2014 they made their mortgage payments to the Landlord through a combination of different funds; some coming from cheques that the Tenant received for a work related illness, some from rent cheques from renters that had been renting part of the mobile home from the Tenant, and the remainder in the form of cash for which they did not get receipts for. The Tenant provided a copy of the work illness cheques that he received as well as the cheques he received from his renters; the Tenant claims that these were then forwarded onto the Landlord as his mortgage payment.

The Tenant's wife pointed to the rent receipts she got from the Tenant's renters where she had noted in the memo section of the rent receipt that the money was going to be forwarded to the Landlord "RE: mortgage". When the Tenant's wife was asked why she had put this note in the memo section of rent receipts being issued to the Tenant's renters, the Tenant's wife explained that she wanted to record that the renter's payments were being used to pay the mortgage for the mobile home.

The Tenant testified that when the rent to own agreement was entered into, there was a witness who was present during the time; however, he is not able to provide testimony as he is now deceased. The Tenant provided a hand written witness statement from one of their renters; he writes that after he had given the Tenant his rent money he saw the Tenant hand over the money to the Landlord. He also writes that he had given the Tenant multiple rides to the Landlord so he could pay his mortgage.

The Tenant provided another statement from a friend who writes that the Tenant was excited to own his new home. The Tenant provided another handwritten statement from friend to show that the Tenant had borrowed money from the friend because he was a little short to pay his mortgage; the witness underlines the word mortgage in the statement. The Tenant provides another statement from a witness who writes that the

deceased party that is now deceased had moved in with the Tenant to help him make the mortgage payments.

The Tenant referred to the Landlord's breakdown of rental payments in 2013 onwards and stated that the amounts being claimed by the Landlord are absurd. The Tenant pointed to amounts such as \$2,000.00 for a loan, \$50.00 for "Rentals Board" and \$10.00 for a chip, submitting that these had nothing to do with unpaid rent.

The Landlord disputed the Tenant's allegation that this was a rent to own agreement and submitted that it was an oral tenancy agreement in which the Tenant was required to pay rent in the amount of \$1,315.00 on the first day of each month. The Landlord testified that the Tenant is required to pay his own utilities and that he pays property taxes for the mobile home. The Landlord acknowledged that he did not provide the Tenant cash rent receipts in this tenancy and denies receiving the Tenant's fifth wheel as a down payment for the tenancy.

The Landlord submitted that had this been a rent to own situation, then there would have been a legal document in place stating this and that he would have referenced this on the transaction documents that were in place showing the purchase of the mobile home to the Landlord.

The Landlord's wife testified that the Tenant started falling into rental arrears eight months into the tenancy and as a result, the Tenant was given a phone so that he could be communicated with for payment of rent; this explained some of \$10.00 chip transactions on the Landlord's hand written breakdown. The Landlord testified that he also loaned the Tenant \$2,000.00 which he then added to the rental arrears and that the \$50.00 amount related to the filing fee he obtained from a previous hearing.

The Landlord explained that he had undergone two previous hearings (the file numbers for which appear on the front page of this decision). During the first hearing on August 22, 2013 the Tenant failed to appear for the hearing and the Landlord was granted an Order of Possession and a Monetary Order for unpaid rent in the amount of \$4,685.00.

The Landlord testified that when he went to serve the Tenant with the order, the Tenant pleaded for more time to make rent payments and that it was the winter period. The Landlord testified that he agreed and did not enforce the order. However, the Tenant continued to fail to make rent payments on time and as a result, the Tenant was issued with two more notices to end tenancy which were disputed by him. However, during the May 20, 2015 hearing to hear the Tenant's Application to dispute the notices to end

tenancy, the Tenant withdrew the application; however, the issue of jurisdiction was raised by the parties but not dealt with in that hearing.

The Landlord testified that the Tenant did make a number of repairs to the mobile home but this was done without any written consent from him. The Landlord explained that he was aware that the Tenant had done renovations but these were done of the Tenant's own violation to further his enjoyment of the mobile home.

Jurisdictional Analysis

Policy Guideline 27 to the Act explains the jurisdiction Arbitrators have under the Act. Section 5 of this guideline provides guidance on agreements with a right to purchase and states the following:

"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".

[Reproduced as written]

I have carefully considered the provisions of the above guideline with the evidence and submissions provided by the parties to determine jurisdiction in this case as follows. There is no written tenancy agreement in this case. The Act defines a **“tenancy agreement”** as 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.

Section 84 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable under the Act. Therefore, if there is no tenancy agreement in place for this tenancy then this would suggest that an oral tenancy may have been established between the parties.

However, the Tenant submits that this is not a tenancy but a rent to own agreement. There is no written contract between the parties that conclusively states that the tenancy was entered into with the intention that payments were being made towards the purchase of the mobile home and the Landlord disputes this assertion by the Tenant. While the Tenant has provided a number of reasons which claim to point to a rent to own situation, I find that in the absence of any independent documents such as a contract or a finding by the Supreme Court as to the ownership interest the Tenant “might” have, the evidence is not sufficient or conclusive enough for me to find that this is a rent to own situation.

I find the Tenant’s witness evidence emanates from parties known to them who only provide evidence that money was exchanged for the purpose of the Tenant making mortgage payments. I find the witness evidence indicating the monies were paid to the Landlord for a mortgage on the mobile home is contradicted by the Landlord’s claim that the monies were being accepted as rent.

I also find the evidence that the Tenant completed renovations and repairs to the property are again not conclusive or sufficient evidence that this is a rent to own situation. The parties provided insufficient evidence for me to conclude that the payments being made to the Landlord included property taxes as this evidence resulted in one party’s word against the others.

I find the Tenant’s evidence relating to payments made during the tenancy comprising of rent cheques from the Tenant’s renters, and cheques received by the Tenant for work related illness are not sufficient evidence that the money was being provided to the Landlord for payment that went above and beyond possession of the rental unit. Neither do I find that rent receipts provided by the Tenant to their renters, and not to the

Landlord, to indicate the rent money was going to be passed to the Landlord to pay their mortgage, is sufficient evidence of a rent to own situation.

Based on the foregoing, I find the Tenants have failed to establish that this tenancy is outside of the jurisdiction of the Act. Accordingly, I find that this situation involves an oral tenancy agreement.

In this respect, I make the following finding on the parties' Application as follows. I find the Tenant is renting the mobile home and the mobile home site. Therefore in this case the *Manufactured Home Park Tenancy Act* does not apply and it is the *Residential Tenancy Act* that governs this type of tenancy.

However, I note that the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on May 21, 2015 under the *Manufactured Home Park Tenancy Act*. The Tenant acknowledged receipt of the Notice on the same day. I also note that both parties made their Applications under the *Manufactured Home Park Tenancy Act*.

In the decision dated May 20, 2015 for a previous hearing involving the Tenant's Application to dispute two previous notices to end tenancy for which the Tenant did not appear for, the Arbitrator specifically mentioned that based on the Landlord's undisputed evidence, this case fell under the *Residential Tenancy Act* and not the *Manufactured Home Park Tenancy Act*.

Based on the foregoing, I find that the Notice served to the Tenant and both parties' Applications do not fall under the jurisdiction of the *Manufactured Home Park Tenancy Act*. Therefore, I am unable to make any legal findings on the Notice or the parties Applications. As a result, I dismiss both parties' Applications pursuant to Section 52(5) (a) of the Act.

The Landlord is at liberty to issue the Tenant with another Notice under the *Residential Tenancy Act* and the Tenant is at liberty to dispute the Notice. Both parties must ensure that any further Applications are also made under the *Residential Tenancy Act*.

During the hearing, the Tenants also mentioned that the Landlord's monetary claim was confusing and that not all items related to unpaid rent amounts. The Landlord is cautioned that any further monetary claims for losses made by him are clearly outlined in the Landlord's Application.

Conclusion

The Landlord's and Tenant's Application are dismissed as there is no jurisdiction under the *Manufactured Home Park Tenancy Act* to determine this dispute. I find that the *Residential Tenancy Act* **does** apply to this tenancy. Therefore, the parties are at liberty to serve documents and make an Application under the *Residential Tenancy Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: July 14, 2015

Residential Tenancy Branch

