



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, AAT, FF

Introduction

This hearing was convened by way of conference call in response to an application for more time to cancel a Notice to End Tenancy; to cancel a One Month Notice to End Tenancy; for an Order to allow access to and from the unit for the tenant or the tenant's guests; and to recover the filing fee from the landlord for the cost of this application.

The parties provided sworn testimony and the applicant provided documentary evidence in support of their claim. On examination of the applicants' documentary evidence, I focused my attention to a document titled "Rent to Own Contract". This document states, in part, that the renter and owner intend that the ownership of the property shall transfer to the renter upon full payment of stated sale price. The renter will pay \$800.00 per month. The parties agree the purchase price is \$40,000.00 and that each month's rent payment shall be applied towards the purchase of the property. The parties agree that if the renter fails to complete purchase of the property for any reason, no refunds or credits shall be due to renter. The renter shall maintain the property, at renters own expense, in clean and working order and is responsible for all repairs that may incur. The renter is responsible for all utilities as well as pad rent and yearly property taxes. The document also lists other conditions.

The parties confirmed the contents of this Rent to Own Contract.

The respondent testified that the renter has been late making the pad rent payments and as it is the respondent who has the lease with the mobile home park for the pad rent then she could be held responsible and have to move the home from the park. The respondent therefore served the applicant with a One Month Notice to End Tenancy on January 06, 2016.

The park manager confirmed that there have been late payments of pad rent.

Analysis

The tenant has applied for dispute Resolution under the *Manufactured Home Park Tenancy Act*; however, the applicant is in a rent to own contract with the owner of the mobile home and does not have a tenancy agreement or lease agreement with the owners of the mobile home park. The lease agreement for the pad is between the mobile home park and the respondent in this matter who is the owner of the mobile home. I find therefore the tenant should have applied under the *Residential Tenancy Act*.

However, I refer the parties to the Residential Tenancy Policy Guideline # 27 which provides guidance in the matter of jurisdiction that 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 considered the above provisions of the policy guideline along with the oral and written evidence of the applicant and respondent and I find that as this tenancy involves a rent to own contract where the rent was intended to be applied to the total purchase price and that the relationship between the parties is that of seller and purchaser of real estate and not that of landlord and tenant. I therefore find that the Legislation does not apply to this matter and therefore I decline jurisdiction. The parties are at liberty to seek alternative legal remedies to address their dispute.

Conclusion

For the reasons set out above, I decline jurisdiction in this matter and I dismiss the application **without** leave to re-apply, pursuant to Section 62(4)(b) of the *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 *Residential Tenancy Act*.

Dated: March 15, 2016

Residential Tenancy Branch