



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNC, CNR

Introduction

This hearing was convened by way of conference call in response to the tenant's application to dispute an additional rent increase; for an Order to cancel a One Month Notice to End Tenancy for Cause and for an Order to cancel a 10 Day Notice to End Tenancy for unpaid rent or utilities.

The hearing was adjourned to allow the parties to provide evidence concerning jurisdictional matters. The hearing was reconvened on today's date.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witnesses on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. Both parties had also provided late evidence but did not raise any objections to that evidence being considered. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Jurisdictional issues

On examination of the documentary evidence provided from both parties, I focused my attention to a document titled "Rental Purchase Agreement". This document states, in part, that this is a mobile home and the rent shall be as follows and commence on September 01, 2000. \$200.00 per month pad rent and \$322.00 per month trailer rent. Total payment \$522.00. Of the \$322.00 trailer rent per month \$161.00 shall be applied towards the purchase price of \$19,500.00. The total paid shall be 121 payments of \$161.00 and one payment of \$19.00 to equal \$19,500.00. The tenant has the right to pay out the balance owing at any time, provided that all payments have been made. Once the final payment has been made, then only the \$200.00 pad rent shall be made and the landlord agrees to transfer title at such a time as the final payment has been made. This document also lists other conditions.

The parties confirmed the contents of this Rental Purchase Agreement.

The respondent testified that the renter has been late making the pad and rent payments and provided a hand written ledger showing total payments made and outstanding amounts since 2007.

The applicant testified that he did work on the manufactured home park for the landlord using his own equipment and provided the landlord with the use of the tenants gravel truck for which the landlord has not paid and the landlord actually now owes the tenant money and all money owed would have satisfied the remaining costs for the mobile home and pad rent.

Analysis

I find the parties have a Rental Purchase Agreement in place for the mobile home and the pad rent is included in this Rental Purchase Agreement. As the Respondent originally owned the trailer and owns the Manufactured Home Park then the tenant should have applied under the *Residential Tenancy Act* and not the *Manufactured Home Park 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 Rental Purchase agreement which may or may not still be in force at the time the applicant made his application and the date of the hearing; where part of the rent was intended to be applied to the total purchase price of \$19,500.00 then 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 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: July 12, 2016

Residential Tenancy Branch