



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TIMBERLANDS PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on October 12, 2016 (the "Application"). The Landlord applied for the following relief pursuant to the *Manufactured Home Park Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by D.H., who provided affirmed testimony. The Tenant did not attend the hearing.

On behalf of the Landlord, D.H. testified that the Tenant was served with the Landlord's Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, by registered mail on October 17, 2016. A copy of the Canada Post registered mail receipt was provided with the Landlord's documentary evidence. Pursuant to section 83 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Tenant is deemed to have received the Landlord's Application package on October 22, 2016.

The Landlord was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlord's agent, D.H., provided oral testimony in support of the Application. She advised that in or about June 2011, the parties entered into an agreement whereby the Tenant would pay the Landlord \$760.00 per month to purchase a manufactured home on a pad. Of the monthly payment, \$400.00 was for pad rent and \$360.00 was on account of a mortgage in favour of the Landlord.

According to D.H., the Tenant has made only two partial payments since April 1, 2016. The partial payments of \$515.00 and \$200.00 were made in May and July 2016, respectively. As I understand the Landlord's claim, the Landlord seeks \$6,125.00 for outstanding pad rent/mortgage payments, plus late fees of \$225.00, from April 1, 2016 to present. The total outstanding is \$6,350.00.

During the hearing, D.H. was asked to submit a copy of the agreement between the parties to the Residential Tenancy Branch. She provided a 7-page Security Agreement dated December 23, 2010. However, the Tenant does not appear to be a party to the Security Agreement. In addition, the Security Agreement does not indicate the monthly payment amount or how payments are allocated between pad rent and the mortgage payment.

Analysis

Based on the affirmed oral testimony and the documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Policy Guideline #27 provides guidance when a question of jurisdiction arises with respect to a transfer of an ownership interest. It states:

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.]

In this case, I find there is insufficient evidence before me to establish jurisdiction. The Landlord's agent was unable to fully articulate the terms of the agreement between the parties. Further, the Tenant is not a party to the Security Agreement submitted by the Landlord's agent after the hearing. In addition, the Security Agreement does not provide details with respect to the amount or allocation of the monthly payment. Accordingly, I am not satisfied on this evidence that the Act provides me with jurisdiction in this matter, and I order that the Landlord's Application is dismissed.

Conclusion

The Landlord's Application is dismissed as I find there is insufficient evidence that I have jurisdiction in this matter.

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: December 07, 2016

Residential Tenancy Branch