



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF MND MNR OPB OPR

### Introduction

This hearing dealt with the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order of Possession based on unpaid rent and a breach of the tenancy agreement pursuant to section 55 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the landlord and the tenants attended the hearing. Both parties were given a full opportunity to be heard, to present sworn testimony and to make submissions.

The landlord provided undisputed testimony that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was hand delivered to the tenants on May 31, 2017. The tenants acknowledged receiving this Notice. Pursuant to section 88 of the *Act*, the tenants are found to have been served with the 10 Day Notice on the same day of service, May 31, 2017.

The landlord explained that the Landlord's Application for Dispute Resolution (Landlord's Application) and evidentiary package were sent to the tenants individually by Canada Post Registered Mail on June 19, 2017. The tenants acknowledged receiving these documents. Pursuant to sections 88 & 89 of the *Act*, the tenants are found to have been duly served under the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Can the landlord recover a monetary award?

Is the landlord entitled to a return of the filing fee?

### Background and Evidence

Testimony was provided to the hearing by the landlord that the parties entered into a contract of purchase and sale of a manufactured home on a rental pad in January 2017. On February 5, 2017, the tenants moved into the manufactured home. In the contract of purchase and sale, the parties agreed that the tenant would pay \$20,000.00 as the purchase price of the manufactured home. In addition, and as a term and condition of their contract of purchase and sale, the tenants agreed to pay a pad rental of \$364.00 and rent for possession of the manufactured home in the amount of \$500.00 monthly on the fifteenth day of each month starting on February 15, 2017. This was to continue until the completion date for the sale, May 30, 2017.

Clause 7 of the contract notes that, "The Buyer will have vacant possession of the Property at 12:00 on February 1, 2017," while, Clause 8 explains, "The Buyer will assume and pay pad rental and any other Manufactured Home Park fees, and all taxes, rates, local improvement assessments, fuel, utilities and other charges (if any), from and including the date set for adjustments, and all adjustments both incoming and outgoing of whatsoever nature will be made as of February 1, 2017."

The landlord is seeking an Order of Possession based on unpaid rent for April, May, June, July and August 2017, as well as a Monetary Order of \$2,592.00 for unpaid rent related to this time period.

### Analysis

This application involves an agreement in the form of a contract of purchase and sale of the purchase of a manufactured home and the assumption of rental obligations. It therefore raises a question as to whether it is a tenancy or an agreement to purchase something more than the right to possession of the premises. If the latter is the case, the agreement does not fall within the scope of a tenancy agreement under the *Act*.

Following a close review and analysis of the contract of purchase and sale, I find that I am without standing to make a determination on the matter before me because the conditions which deal with payment of rent are specifically stated to be part of the purchase of the manufactured home. At the bottom of page 1 the contract states, "The Buyer agrees to purchase the Unit and take an assignment of the existing agreement for rental of the Pad Location (*Pad Tenancy Agreement, and collectively with the Unit, the Property*) from the Seller on the following terms and subject to the following conditions."

Under the heading marked, 'Terms and Conditions', Clause 3 of the contract of purchase and sale states, "The purchase and sale of the Property includes the following terms and is subject to the following conditions: Buyer agrees to pay pad rent in amount of \$364.00 and rent in the amount of \$500.00 monthly due the fifteenth day of each month commencing February 15, 2017 and continuing monthly until the completion date."

A plain reading of the contract therefor reveals that these rental payments were in fact terms and conditions of the sale of the manufactured home. The landlord therefore, has no recourse under the *Act* to recover any money owed under this agreement because the agreement is not confined to the right to possession of the premises but includes the right to ownership of the manufactured home and hence is not a tenancy as defined under the *Act*.

### Conclusion

I decline to rule on this matter as I have no jurisdiction to consider this application

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: August 25, 2017

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Residential Tenancy Branch