



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR

Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the “Act”) for:

- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;

This application was originally heard by way of a Direct Request Proceeding and on July 4, 2017 an interim decision was issued adjourning the application to be reconvened at a participatory hearing.

The hearing was conducted by conference call. The respondent did not attend this hearing, although I waited until 1:50 p.m. in order to enable the respondent to connect with this teleconference hearing scheduled for 1:30 p.m. The Applicant attended the hearing and was given a full opportunity to provide testimony, present evidence and make submissions.

The Applicant testified that on June 29, 2017, a copy of the Application for Dispute Resolution including the Notice of Hearing and Interim Decision was sent to the Respondent by registered mail. The Applicant provided a registered mail tracking number in support of service.

Based on the above evidence, I am satisfied that the respondent was deemed served with the Application for Dispute Resolution, Notice of Hearing and Interim Decision pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the Respondent.

Issues

Do I have jurisdiction under the Act to make a decision on the application before me?

If yes, is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

If yes, is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

The rental unit is a manufactured home in a mobile home park. The parties entered into a contract of purchase and sale on February 1, 2015 with a closing date of March 31, 2017. The respondent took possession of the manufactured home on February 6, 2015. The Applicant argues the respondent did not complete the contract of purchase on the completion date of March 1, 2017 therefore the contract has expired and has now reverted to a month to month tenancy. The contract required a \$2500.00 deposit on March 6, 2015 and then monthly payments of \$1500.00 which would include the pad rental fee of \$393.45. The seller was responsible for the continued timely payment of pad fees. An amount of \$250.00 from the monthly payments was also to be credited towards the purchase price of \$134,900 with the balance being payable on March 31, 2017.

The Applicant submits the respondent fell into arrears on the monthly payments and failed to complete on the contract by paying the balance of the purchase price therefore a 10 Day Notice was issued. The Applicant requests an order of possession and a monetary order in the amount of \$5250.00 for the payment arrears.

Analysis

Before making any finding on the merits of the claim, I must determine if I have jurisdiction under the Act to make a decision on the application before me.

A tenancy agreement is defined under section 1 of the Act as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Residential Tenancy Policy Guideline #27 **"Jurisdiction"** provides the following guidance on page 27-4:

5. TRANSFER OF AN OWNERSHIP INTEREST:

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.

I find the parties entered into a contract of purchase and sale and not a tenancy agreement as defined under the Act. As per the contract, the monies that exchanged hands formed part of the purchase price of the manufactured home. The fact that the respondent may have fell into arrears or not completed on the contract by paying the balance of the purchase price does not alter this finding.

Therefore, I find that the Act does not apply and I do not have the jurisdiction to make findings on the remedies requested by the Applicant.

Conclusion

I find that I do not have jurisdiction over 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 *Residential Tenancy Act*.

Dated: August 17, 2017

Residential Tenancy Branch