



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, O

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenants for the cost of the application.

The landlord and both tenants attended the hearing, however one of the tenants introduced himself by a different name than that on the Landlord Application for Dispute Resolution.

At the commencement of the hearing the landlord advised that the tenants have vacated the rental unit and the landlord's application for an Order of Possession is withdrawn. Also, the landlord did not collect a security deposit or pet damage deposit from the tenants, and the application to keep a security deposit or pet damage deposit is also withdrawn.

The tenants applied to adjourn the hearing to allow more time to provide evidentiary material, which was opposed by the landlord. The tenants were required to leave the rental unit in mid-August, leaving them homeless and the tenants had to live in a tent. The landlord argued that the evidence of the tenants could be provided by way of oral testimony and an adjournment is not necessary. I agreed with that, and the hearing commenced.

The landlord has made the application under the *Residential Tenancy Act* and the issue of jurisdiction was raised.

The parties each gave affirmed testimony and were given the opportunity to question each other. No issues with respect to service or delivery of documents or evidence

were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

The issues remaining to be decided are:

- Does the Residential Tenancy Branch have jurisdiction to hear this dispute and make any orders under the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenants for unpaid rent?

Background and Evidence

The landlord testified that he is the manager of the manufactured home park. This month-to-month tenancy began on August 1, 2015 and the tenants moved out of the rental unit on August 18, 2017. The rental unit is a manufactured home on a lot in the manufactured home park. Pad rent is \$385.00 per month due on the 1st day of each month, in addition to monthly payments on the home, and the tenants are in arrears \$3,080 for pad rental.

A copy of an agreement has been provided as evidence for this hearing. It is not dated and is entitled, "Purchase Agreement." It states that payments of \$480.00 per month are required on or before the 1st day of every month commencing August 1, 2015 and sets out a purchase price for the manufactured home. It does not contain the landlord's name, but that of another person as "Seller." It also states that pad rent is a separate matter at \$385.00 per month. The agreement also specifies that: "Residential rules and arbitration decision as laid out by the British Columbia Landlord Tenant Act apply to this contract. In the event of a legal eviction, all monies are forfeited to the seller, and this contract revolves into a standard rental agreement." The landlord testified that the agreement is 2 parts, one for the purchase of the home and the other part is pad rent, and the landlord's claim is for the pad rent part, and unpaid utilities.

The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on June 20, 2017 by handing it to one of the tenants who handed it to the other tenant. A copy has been provided and it is dated June 20, 2017 and contains an effective date of vacancy of July 1, 2017 for unpaid rent in the amount of \$5,190.00 that was due on June 1, 2017.

The landlord claims arrears of pad rent from January to August, 2017 as well as utilities in the amount of \$376.00. The tenants were to pay \$480.00 per month for the home as well as pad rent of \$385.00 per month and water at \$47.00 per month. The landlord's claim is for the pad rent and utilities only, for a total of \$3,456.00.

The first tenant (CB) testified that the tenants purchased the manufactured home from the owner of the park and the manufactured home. The tenants paid from August, 2015 to the end of December, 2016. The owner was to come by every January to re-write the contract and the loan amount, and would collect post-dated cheques, but failed to show up in January, 2017. The owner's girlfriend contacted the tenants saying that the owner had suffered strokes and was unable to deal with the manufactured home. She also advised not to worry about the contract, that someone, a lawyer or power of attorney would get a hold of the tenants. The owner's girlfriend called the tenants again in May, 2017 saying that the owner had not recovered.

The owner of the manufactured home also owns the manufactured home park and gets the water bill for the entire park. He also advised the tenants that the landlord who has appeared for this hearing was only to facilitate the sale, and did not have authority to make any deals, and stated that the contract was not with him.

The second tenant (DL) testified that from January to date the landlord who has attended this hearing has not been able to give the tenants an accurate number. The amounts on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities didn't add up to the amounts the tenants paid last year, and each time the amount was different.

Analysis

The landlord's application seeks monetary compensation from the tenants under the *Residential Tenancy Act* in the amount of \$6,102.00, based on a document entitled "Purchase Agreement."

The *Residential Tenancy Act* specifies that:

4 This Act does not apply to

- (a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,
- (b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,
- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

- (d) living accommodation included with premises that
 - (i) are primarily occupied for business purposes, and
 - (ii) are rented under a single agreement,
- (e) living accommodation occupied as vacation or travel accommodation,
- (f) living accommodation provided for emergency shelter or transitional housing,
- (g) living accommodation
 - (i) in a community care facility under the *Community Care and Assisted Living Act*,
 - (ii) in a continuing care facility under the *Continuing Care Act*,
 - (iii) in a public or private hospital under the *Hospital Act*,
 - (iv) if designated under the *Mental Health Act*, in a Provincial mental health facility, an observation unit or a psychiatric unit,
 - (v) in a housing based health facility that provides hospitality support services and personal health care, or
 - (vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,
- (h) living accommodation in a correctional institution,
- (i) living accommodation rented under a tenancy agreement that has a term longer than 20 years,
- (j) tenancy agreements to which the *Manufactured Home Park Tenancy Act* applies, or
- (k) prescribed tenancy agreements, rental units or residential property.

The Purchase Agreement is just that – an agreement between the owner and the tenants for the sale/purchase of the manufactured home.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities under the *Residential Tenancy Act* claiming \$5,190.00 of unpaid rent that was due on June 1, 2017 and testified that the tenants are in arrears \$3,080.00 for pad rental, and \$376.00 for utilities. The landlord's position is that the aforesaid agreement is separated into 2 parts, one being the purchase and the other being pad rental considering the term: "Pad rent is a separate matter and is set at \$385.00 per calendar month." However, the *Residential Tenancy Act* does not apply to either.

I find that the term in the agreement, "Residential rules and arbitration decision as laid out b the British Columbia Landlord Tenant Act apply to this contract. In the event of a legal eviction, all monies are forfeited to the seller, and the contract revolves into a standard rental agreement," is unconscionable. Neither the *Residential Tenancy Act*

nor the *Manufactured Home Park Tenancy Act* allows for such terms, and the parties may not enter into a contract that is contrary to the law. In fact, the *Residential Tenancy Act* specifies that terms that are contrary to the law are not enforceable.

I also find that the Purchase Agreement does not comply with the requirements of a tenancy agreement under the *Manufactured Home Park Tenancy Act*. Section 13 of the *Manufactured Home Park Tenancy Act* sets out the requirements of a tenancy agreement, and the only such term that is contained in the Purchase Agreement is the amount of pad rent payable.

The jurisdiction of the Residential Tenancy Branch is limited to applications under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*. I find that the contract is a Purchase Agreement, and not a tenancy agreement under the *Residential Tenancy Act*, or the *Manufactured Home Park Tenancy Act*, and I decline jurisdiction with respect to the landlord's application.

Conclusion

For the reasons set out above, I decline jurisdiction with respect to the landlord's 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 *Residential Tenancy Act*.

Dated: October 04, 2017

Residential Tenancy Branch