



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOMBARDY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

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

- an order of possession for unpaid rent, pursuant to section 48;
- a monetary order for unpaid rent or utilities, pursuant to section 60; and
- authorization to recover the filing fee for this application, pursuant to section 65.

The tenant did not attend this hearing, which lasted approximately 24 minutes. The landlord's agent, LH ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed authority to speak on behalf of the landlord company named in this application as an agent at this hearing.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on August 15, 2017, by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing. In accordance with sections 82 and 83 of the *Act*, I find that the tenant was deemed served with the landlord's application on August 20, 2017, five days after its registered mailing.

Preliminary Issue – Jurisdiction to hear Matter

At the outset of the hearing, the landlord confirmed that three previous Residential Tenancy Branch ("RTB") hearings took place before three different Arbitrators, regarding this tenancy, after which four decisions were issued. The file number for those hearings, which are all related to one original file, appears on the front page of this decision.

The landlord confirmed that the first RTB hearing took place on November 23, 2016, where only the landlord attended and the tenant did not, after which a decision of the same date was issued granting the landlord an order of possession against the tenant. The landlord agreed that the tenant filed for a review of that decision because he was unable to attend and a new review hearing was granted, pursuant to a review consideration decision, dated December 1, 2016, issued by a different Arbitrator at the second RTB hearing.

The landlord confirmed that the new review hearing, which was the third RTB hearing, took place on January 10, 2017, after which a decision of the same date was issued by a different Arbitrator. The decision declined jurisdiction over this tenancy and set aside the decision and order of possession issued at the first hearing on November 23, 2016. The landlord requested a clarification of that decision, which was issued by the same Arbitrator on February 6, 2017, but did not change the decision in any way. The Arbitrator noted the following in the third RTB hearing decision at page 2:

The parties agreed that this contract included that the applicant would pay the respondent \$630.00 on the 1st of each month beginning May 1, 2016. The contract includes the following clauses:

- *The parties agree the purchase price of the property is \$7,500.00;*
- *The parties agree that \$300.00 of each month's rent payment shall be applied towards purchase of the property;*
- *The parties agree that ownership of the property shall transfer to Renter upon Renters' completion of 25 payments as described above.*

I note that there is no mention of any pad rental fees in this contract. However, the agent for the respondent confirmed that \$300.00 each month was to towards the purchase of the manufactured home and that \$330.00 each month would be applied to the pad rental. The applicant confirmed that this was the current agreement.

...

In the case before me, I find the parties have entered into an agreement that includes an agreement to transfer the subject manufactured home and at least a portion of the monies changing hands relates to its purchase price. As such, I find the agreement does not fall within the jurisdiction of the Manufactured Home Park Tenancy Act.

At the hearing, I questioned the landlord as to whether any of the above facts noted in the third RTB hearing decision had changed since the last hearing in January 2017. The landlord said that it had, since the tenant stopped paying rent as of February 1, 2017, to date. The landlord claimed that the failure to pay rent for two months made the parties' contract of purchase and sale null and void. The landlord claimed that the contract was not provided as evidence for this hearing because it was given at the last hearing for the last application and the landlord said it was irrelevant in any event because it re-raised the question of jurisdiction.

When I questioned why the landlord waited until August 8, 2017 to file this current application, six months after the tenant allegedly stopped paying rent and four months after the purchase contract allegedly would have been null and void, the landlord claimed that this matter had gone to Court and a judge had verbally advised the landlord to pursue this matter at the RTB because it was outside the Court's jurisdiction. When I asked the landlord whether there were written or oral reasons for judgment or the court clerk's notes from the proceeding, the landlord did not know. The landlord claimed that a lawyer advised the landlord to pursue the matter at the RTB but stated that no lawyer was advocating on behalf of the landlord at this hearing because of the jurisdiction issue.

Analysis

The landlord did not provide the contract of purchase and sale, indicating the circumstances under which it becomes null and void. Evidence from a previous hearing or file is not transferred over to the current file. I notified the landlord about this during the hearing.

The landlord did not provide written documentation that the contract of purchase and sale had been rescinded or revoked with notice to the tenant, despite the fact that the tenant has allegedly failed to pay rent since February 2017 and this hearing occurred on November 1, 2017.

The landlord did not provide any Court records relating to the Court hearing that apparently took place allegedly declining jurisdiction and sending the matter back to the RTB.

I find that the landlord failed to provide sufficient evidence of any new circumstances or a change in circumstances since the previous third RTB hearing decision, dated January 10, 2017.

Accordingly, I find that I am without jurisdiction to consider the landlord's application. A previous decision, dated January 10, 2017, has already been made declining jurisdiction and I agree with those findings. I notified the landlord about my decision verbally during the hearing.

Conclusion

I decline to hear the landlord's application as I have no jurisdiction under 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 *Manufactured Home Park Tenancy Act*.

Dated: November 02, 2017

Residential Tenancy Branch