



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNL, DRI, OLC, RPP, O, OPR, OPB, MNDC, FF

Introduction

This hearing was scheduled to deal with Applications for Dispute Resolution filed by each party to deal with the following issues:

1. A Tenant's Application for Dispute Resolution filed by SR under the *Manufactured Home Park Tenancy Act* (MHPTA) to cancel a Notice to End Tenancy for Landlord's Use of Property; dispute of an additional rent increase; for orders for compliance; return of personal property, and other issues.
2. An Amendment to the Tenant's Application for Dispute Resolution to dispute a 10 Day Notice to End Tenancy for Unpaid Rent dated August 16, 2017.
3. A Landlord's Application filed by MM under the *Residential Tenancy Act* (RTA) for an Order of Possession for unpaid rent and breach of an agreement between the parties; and, monetary compensation for damage or loss under the Act, regulations or tenancy agreement. .

Both parties appeared at the hearing and were provided the opportunity to make submissions and provide responses to the relevant matters.

I confirmed that the parties had served their respective hearing packages and evidence upon each other.

I noted that I was not provided a copy of a Notice to End Tenancy for Landlord's Use of Property in one of the approved forms available under the RTA or MHPTA by either party. The parties confirmed that no such notice was given. Accordingly, I did not consider that issue any further.

Preliminary Issue -- Jurisdiction

At the outset of the hearing SR submitted that MM's application should be dismissed because MM's application pertains to a dispute concerning ownership of the recreational vehicle he occupies. I expressly informed the parties that I do not have jurisdiction to resolve a dispute concerning ownership of chattels, including recreational vehicles, and both parties confirmed that they understood that.

Applications for Dispute Resolution which the Director of the Residential Tenancy Branch and I, as a delegated authority of the Director, have jurisdiction to resolve must be made under the: *Residential Tenancy Act* (RTA) or the *Manufactured Home Park Tenancy Act* (MHPTA). I noted that I had a Landlord's Application for Dispute Resolution filed by MM under the RTA and a Tenant's Application for Dispute Resolution filed by SR under the MHPTA involving the same parties and the same property. Accordingly, I determined it necessary to decide whether the RTA or the MHPTA applies to the arrangement between the parties.

I confirmed that SR occupies a recreational vehicle that was provided to him by MM; however, the parties were in dispute as to whether MM or SR is the owner of the recreational vehicle.

Living accommodation that consists of a recreational vehicle may fall under the RTA or the MHPTA, depending on the circumstances and ownership of the recreational vehicle.

The RTA applies where the landlord provides the living accommodation to the tenant under the terms of their tenancy agreement. As provided in Residential Tenancy Policy Guideline 27: *Jurisdiction* under the sub-section "Travel Trailers and Recreational Vehicles":

If the residential premises consist of a travel trailer or a recreational vehicle in a recreational vehicle park, the agreement between the parties may well be included in the *Residential Tenancy Act* if they meet the requirements of section 2. Each case will turn on its particular circumstances and it is possible that the relationship is not a tenancy and not included in the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act* (see Guideline 9).

If SR owns the recreational vehicle, as he claims, then he is providing his own living accommodation and the RTA is not applicable. SR was of the position that the RTA does not apply to the arrangement between the parties but the MHPTA does. MM was

of the position that the parties do not have a landlord/tenant relationship or a tenancy agreement that falls under the RTA or the MHPTA.

Where jurisdiction is called into question, the applicant bears a burden to establish the Act under which they made their Application for Dispute Resolution applies. Since both parties took the position that the RTA does not apply to their agreement and MM took the position that the MHPTA does not apply, I dismiss the Landlord's Application for Dispute Resolution that is before me.

SR maintained that the MHPTA applies to the arrangement between the parties and I proceed to consider whether the MHPTA applies. The MHPTA applies to tenancy agreements between a landlord and a tenant concerning possession of a manufactured home site but does not apply to licenses to occupy (more information concerning licenses to occupy may be found in Residential Tenancy Branch Policy Guideline 9). Under the MHPTA, where a landlord and a tenant have a tenancy agreement, as opposed to a license to occupy, the manufactured home is the lawful property of the tenant, not the landlord. Accordingly, in order to find that the MHPTA applies, I must be satisfied that the recreational vehicle is the lawful property of SR among other things.

As to ownership of the recreational vehicle, SR was of the position that he purchased the recreational vehicle from MM in October 2015 and that MM personally financed the purchase. MM was of the position that the parties had a "rent to own agreement" for purchase of the recreational vehicle requiring SR to make monthly payments toward the purchase price of \$10,000.00 with the principal sum to be paid on or before September 1, 2017. MM pointed to the document entitled "Promissory Note" that executed by the parties in September and October 2015, and amended in June 2016. MM submitted that SR has failed to pay the full purchase price by the due date of September 1, 2017.

Both parties provided consistent testimony that the title or registration for the recreational vehicle has not been given to SR by MM. SR indicated that MM is withholding the title or registration from him. SR was of the position the title should be provided to SR so that he may register the recreational vehicle in his name and MM may be listed as a lien holder.

SR was of the position that he has not breached the Promissory Note as he continues to pay the \$200.00 monthly payments to MM toward the purchase price. When I pointed out that the deadline for paying the purchase price appears to read September 1, 2017 SR responded by stating MM made him sign that change to the original agreement.

Based on the evidence before me, I find the evidence does not sufficiently satisfy me that the recreational vehicle is the lawful personal property of SR. Accordingly, I am unsatisfied that the MHPTA applies in this case so I decline to take jurisdiction and I dismiss the Tenant's Application for Dispute Resolution that is before me.

It is important to note that although I have indicated I am not satisfied the recreational vehicle is the lawful personal property of SR for purposes of determining jurisdiction in this case, my finding is not determinative for other purposes. Both parties were encouraged to seek independent legal advice as to how to proceed to resolve their dispute concerning ownership of the recreational vehicle.

As for the validity or enforceability of the 10 Day Notice to End Tenancy for Unpaid Rent dated August 16, 2017 that was submitted to me by both parties under their respective Applications for Dispute Resolution, I note that it was issued by MM under the RTA. Since MM has taken the position that the RTA and MHPTA do not apply to the parties' arrangement, MM cannot rely upon the 10 Day Notice to regain possession of the recreational vehicle or the site under the RTA or MHPTA. Accordingly, I do not issue an Order of Possession to MM and the 10 Day Notice is of no force or effect upon SR.

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: November 03, 2017

Residential Tenancy Branch