



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

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein he sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on December 2, 2017.

The hearing was conducted by teleconference on January 15, 2018. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue—Jurisdiction

The issues between the parties have been before the Residential Tenancy Branch since at least November 2016. In two prior Decisions, the branch has refused jurisdiction. The history of the proceedings is aptly described in the November 2, 2017 Decision of Arbitrator Martin; my Decision must be read in conjunction with Arbitrator Martin's November 2, 2017 Decision.

In her Decision, Arbitrator Martin noted that:

“[t]he Landlord failed to provide any court records relating to the court hearing that apparently took place allegedly declining jurisdiction and sending the matter back to the RTB.”

At the hearing before me the parties confirmed that they attended the B.C. Supreme Court before the Honourable Madam Justice Church. The parties further confirmed that the Landlord's Application for a Writ of Possession was dismissed. Neither party could advise whether the validity of the contract of purchase and sale was addressed by Madam Justice Church.

The Landlord's representative stated to me that there was “no court record”. Clearly this is not the case. A court record includes the originating application (the first document filed by the Claimant which sets out the claims), any response filed by the Respondent (setting out the Respondent's position on the claims made), affidavits filed by either party in support of their position, any Orders made by the presiding Judge, the Clerk's Notes and the recording of the proceeding. Neither party submitted any documents relating to the Supreme Court application.

A party may apply for a Writ of Possession at the B.C. Supreme Court after an Order of Possession is obtained at the Residential Tenancy Branch. As such, it is not surprising that the Landlord's application for a writ of possession was dismissed by the B.C. Supreme Court and that the Landlord was informed they should apply to the Residential Tenancy Branch for an Order of Possession. That does not, however, conclude that the Residential Tenancy Branch has jurisdiction over this matter.

As noted by Arbitrator Maddia on January 10, 2017:

Residential Tenancy Policy Guideline 27 states that 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 *Manufactured Home Park Tenancy Act (Act)*. 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 *Act*, is the right to possession of the manufactured home park site. 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 *Act* would not apply.

In the case of a tenancy agreement with a right to purchase, the issue of jurisdiction will turn on the construction of the agreement. If the agreement meets either of the tests outlined above, then the *Act* may not apply. However, if the parties intended a tenancy to exist prior to the exercise of the right to purchase, and the right was not exercised, and the monies which were paid were not paid towards the purchase price, then the *Act* may apply and the RTB may assume jurisdiction. Generally speaking, the *Act* applies until the relationship of the parties has changed from landlord and tenant to seller and purchaser.

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*.

Conclusion

In the hearing before me, the Applicant failed to provide any further evidence which would disrupt the findings of Arbitrator Maddia and Arbitrator Martin. I therefore decline jurisdiction.

The validity of the rent to own contract and the relationship of the parties as seller and purchaser is a matter which falls outside my jurisdiction.

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: January 26, 2018

Residential Tenancy Branch