



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes OPT, MNDCT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Manufactured Home Park Tenancy Act* (the "Act") seeking:

- An Order of Possession pursuant to section 47; and
- A monetary award pursuant to section 60.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant LM (the "tenant") primarily spoke for both co-tenants. The landlord HM (the "landlord") spoke for both named landlords.

As both parties were in attendance I confirmed service of the tenants' application for dispute resolution and their evidence. The landlord confirmed receipt of the tenants' application and evidence. The tenant said that the landlord was withholding evidence but did not object to the evidence that was served. In accordance with sections 88 and 89 of the *Act*, I find the parties were duly served with the tenants' application and the respective evidence.

### Issue(s) to be Decided

Are the tenants entitled to an Order of Possession of the dispute property?

Are the tenants entitled to a monetary award as claimed?

### Background and Evidence

The parties are family members. The landlord is the owner of a 20 acre property. The tenants moved a trailer onto the property and began residing there in July, 2017.

The tenant testified that there was no written tenancy agreement and the terms of their occupation was changed on a daily basis by the landlord. The tenant said that initially they intended to purchase equity in the property and become co-owners along with the landlord and a third family member. The tenant said that the plan was for each family member to become a 1/3<sup>rd</sup> owner of the 20 acre property. The tenant testified that he purchased a snow blower for approximately \$2,500.00 and that was meant to be the down payment for his share of the property. The tenant said that the purchase price for his share of the property was \$40,000.00.

The tenant said that he still intends to proceed with the purchase even though the other family member has backed out. The tenant said that separate from the agreement to purchase he has been paying rent

in the amount of \$500.00 since July, 2017. The tenant claimed that he entered into an agreement with the landlord that the rent would allow him access to 488,000 square feet of the property.

The landlord disputes the tenant's evidence. The landlord said that there is no agreement that the tenant will purchase interest in the property and the snow blower is not a down payment. The landlord said that the tenant is family, and when he required a place to stay, he allowed them to occupy the property. The landlord said that there was no agreement about what area of the property could be occupied. The landlord testified that while he accepted the periodic payments of \$500.00, they were intended as a courtesy and not considered rent. The landlord said that while the payments were referred to as rent by the parties there was no agreement that the tenants would have the right to occupy the property.

### Analysis

Section 2 of the *Act* stipulates that subject to section 4 [what this *Act* does not apply to] the *Act* applies to tenancy agreements, manufactured home sites and manufactured home parks.

Residential Tenancy Policy Guideline 9 lists some of the factors to consider in determining if a situation is a tenancy or a license to occupy. These factors include the intended use of the manufactured home, the nature of the property where the home is located, the zoning restrictions set by the local government, and the services and restrictions imposed in the agreement. The onus is on the party making an application under the *Act* to establish that a tenancy agreement exists.

I find that there is insufficient evidence in support of the existence of a tenancy agreement. I find that the agreement between the parties contains too many ambiguities and unknown factors to be considered an enforceable tenancy agreement. While there appears to be an agreement that the tenant could place his trailer on the landlord's property the landlord said this was done as a favor to a family member. The tenant gave evidence that there was an arrangement to purchase interest in the property, and that a snow blower was meant to be a down payment on the property purchase. The tenant gave inconsistent evidence about the arrangement between the parties for the property purchase. The tenant also testified that there was an agreement that he was allowed exclusive occupancy of 488,000 square feet of the property. I find the tenant's testimony to be inconsistent both internally as well as with what may be reasonable under the circumstances.

The landlord testified that the tenants were allowed on the property as a favor for a relative. The landlord said that while he accepted payments of \$500.00 when the tenant made them, they were considered a courtesy and not rent payments. The landlord said that he provided some receipts to the tenants at their request where the payments were referred to as rent.

I find that based on the evidence of the parties I am not satisfied that a tenancy agreement exists. I do not find the reference to some payments made as "rent" to be conclusive evidence that the parties intended this to be a tenancy situation. The parties have referred to the arrangement in a variety of ways: A favor done for a family member, a buy-in agreement, or tenancy. I find that the informal arrangement between the parties does not meet the definition of a tenancy agreement under the *Act*. The payment is made irregularly, there is no agreement between the parties as to the site that the tenant is entitled, and no agreement regarding use of common areas.

I find that this is not a tenancy as set out in the Act and therefore I do not have jurisdiction to make a decision on the application before me. This application is dismissed in its entirety.

Conclusion

I find that I do not have jurisdiction in this matter and I dismiss the tenant's application for dispute resolution.

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 3, 2018

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Residential Tenancy Branch