



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MDSD & FF

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent and utilities
- b. A monetary order in the sum of \$10,445 for unpaid rent and damages
- c. An order to retain the security deposit
- d. An order to recover the cost of the filing fee

The Application for Dispute Resolution filed by the Tenants makes a claim for an order to cancel the 10 day Notice to End Tenancy dated May 24, 2018.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was served on the Tenants by mailing, by registered mail to where the Tenants reside. Further I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing filed by each party was sufficiently served on the other by mailing, by registered mail.

Preliminary Matter:

The Notice to End Tenancy used by the landlord does not indicate whether it is served under the Manufactured Home Park Tenancy Act or the Residential Tenancy Act. However, both parties filed a claim under the Manufactured Home Park Tenancy Act. That Act does not apply in this situation as the named landlord does not own the manufactured home pad.

The tenants submit that the relationship between the parties involves the sale of a manufactured home from the Landlord to the Tenants and that the Residential Tenancy

Act and Manufactured Home Park Tenancy Act do not apply. As a result they submit that I do not have jurisdiction to hear this dispute.

Background and Evidence:

KMT and DJP took possession of the manufactured home in August of 2013 after the parties signed a document entitled Rent-To-Own contract which contained the following terms:

- The manufactured home is described with serial number.
- The sale price is set at \$85,000 payable in 85 installments of \$1000 per month or faster.
- The manufactured home can be bought out in full at any time at the discretion of the buyer.
- Title of ownership to be registered Manufactured Home will be transferred to the buyer after full payment of \$85,000 has been made.
- Certain chattels were pledged as collateral to be returned after \$25,000 has been paid.

There was a collateral agreement that included the following:

- NCP would pay the pad fees to the Park and property taxes and
- KMT and DJP would reimburse Mr. P for the pad fees and taxes
- KMT and DJP offered various chattels as security that was to be released after they had paid \$25,000 of the purchase price.

There is a document dated February 2016 that states \$25,000 cash deposit has been paid and the landlord releases the collateral.

There is no written tenancy agreement between the parties.

As of April 2018 KMT and DJP made 57 payments of \$1000 which totals \$57,000. They advised NCP that they have another \$27,000 and they wished to complete the transaction. NCP refused to complete. .

NCP evidence and submissions are as follows:

- He will not honor this faulty contract that was fraudulently designed from the start and has been broken multiple times by his Tenant. He declares the contract null and void.

- The contract was part of a fraudulent bankruptcy scheme for DJP to defraud creditors who wanted to hide his possessions.
- Shortly after moving in DJP sold the security chattels without his permission.
- He has been paying the hydro and they refuse to reimburse him for the hydro since 2014
- KMT and DJP took advantage of him and he was not aware of the document which he signed

Analysis:

The definition of “tenancy agreement under the Manufactured Home Park Tenancy Act is as follows:

"tenancy" means a tenant's right to possession of a manufactured home site under a tenancy agreement;

The definition of tenancy agreement in the Residential Tenancy Act is as follows:

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

Policy Guideline 27 includes the following:

2. TRANSFERRING OWNERSHIP

A tenancy agreement transfers a landlord's possessory rights to a tenant. It does not transfer an ownership interest. If a dispute is over the transfer of ownership, the director does not have jurisdiction. In deciding whether an agreement transfers an ownership interest, an arbitrator may consider whether:

- money exchanged was rent or was applied to a purchase price;
- the agreement transferred an interest higher than the right to possession;

After carefully considering all of the evidence and the submissions of both parties I determined that I do not have jurisdiction for the following reasons:

- This matter does not involve the rental of a manufactured home pad as NCP does not own the pad on which the manufactured home sits. The Manufactured Home Park Tenancy Act does not apply.

- The contract between the parties indicates it involves the sale of the manufactured home to KMT and DJP. The \$1000 per month was to be applied to the purchase price.
- The contract involves an agreement of an interest higher than the right to possession.
- Apart from the title, the written agreement does not indicate any payments was to be for rent.
- NCP does not have the legal right to unilaterally declare the agreement to be null and void. The issue of whether this agreement is binding on the parties is a matter for the Supreme Court of British Columbia to decide. .

Determination and Orders:

I determined that I do not have jurisdiction. As a result I declined to hear both applications.

The parties have a right to make a claim in the Supreme Court of British Columbia to have this dispute adjudicated.

This decision is final and binding on the parties.

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: July 19, 2018

Residential Tenancy Branch