



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KRAMER HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDCT

Introduction

This hearing dealt with an application from occupants residing in the manufactured home identified above pursuant to the *Manufactured Home Park Tenancy Act* (the *MHPTA*). As any tenancy that does exist in this matter would be pursuant to the *Residential Tenancy Act* (the *RTA*), I have amended this application accordingly, as per powers delegated to me under both pieces of legislation. The application was for cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), which was issued by the corporate landlord KHL to the Estate identified above pursuant to section 39 of the *MHPTA*. The application which I find was actually submitted pursuant to section 67 of the *RTA* was for a monetary order for compensation for losses or other money owed under the *RTA*, regulation or tenancy agreement.

All parties were represented at this teleconference hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The Applicants confirmed that their application for a monetary award was solely directed at Respondent MC in his role as the Executor for the Estate identified above. As the corporate landlord was not exposed to the monetary segment of this application, the corporate landlord's representatives only attended and participated in the first portion of this hearing, which discussed the application to cancel the 10 Day Notice.

As the agent for Respondent MC (the agent) confirmed that MC received a copy of the 10 Day Notice posted on the door of this manufactured home on June 4, 2018, I find that the tenant in the manufactured home site, the Estate noted above, was duly served with this Notice in accordance with section 81 of the *MHPTA*. As the representatives of the Respondents both confirmed that they received copies of the Applicants' dispute resolution hearing package and written evidence package sent by the Applicants by

registered mail, I find that the corporate landlord was duly served with these packages in accordance with section 81 and 82 of the *MHPTA* and Respondent MC was duly served with these packages in accordance with section 88 and 89 of the *RTA*. Since the Applicants confirmed that they had received the corporate landlord's written evidence sent by the corporate landlord's legal counsel by registered mail, I find that the corporate landlord's written evidence was served in accordance with section 81 of the *MHPTA*.

The agent testified that she had only become involved in this matter to act on Respondent MC's behalf recently. For that reason and as Respondent MC was experiencing serious health concerns, the agent was only able to assemble and serve Respondent MC's written evidence to the Applicants, the night before this hearing. One Applicant testified that they had reviewed this material; the other Applicant testified that although they had received this written evidence, they had not had an opportunity to review this material. As Respondent MC's written evidence was served far after the time frames established by the Residential Tenancy Branch (the RTB) and one of the Applicants had not had an opportunity to review that evidence, I have not considered this written evidence in reaching my decision. The discretion to decline late evidence of this nature is set out in the RTB's Rule of Procedure 3.11.

Issues to be Decided with respect to the application to Cancel the 10 Day Notice

Do the Applicants have authority to apply to cancel the 10 Day Notice? If so, should the 10 Day Notice be cancelled? If the Applicants do not have authority to apply to cancel the 10 Day Notice or if the Applicants have the authority to apply to cancel the 10 Day Notice but have been unsuccessful in their application, should an Order of Possession be granted to the corporate landlord?

Issue(s) to be Decided with respect to the Application for a Monetary Award

Is the relationship between the Applicants and Respondent MC in his role as Executor for the Estate identified above one that falls within the jurisdiction of the *RTA*? If so, are the Applicants entitled to a monetary award against Respondent MC for losses arising out of this tenancy?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and documents, social media messages, text messages, invoices, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the application and my findings around each are set out below.

The corporate landlord entered into written evidence a copy of the original Manufactured Home Park Tenancy Agreement signed by Respondent MC's mother and the corporate landlord for this manufactured home park site in July 2013. In November 2015, Respondent MC's mother passed away, which left Respondent MC as the Executor in charge of her Estate. The Estate continues to own the manufactured home on the manufactured home park site. The current monthly rent for this site is \$540.00.

In March 2018, Applicant PM approached Respondent MC about the possibility of the Applicants residing in the Estate's manufactured home as the Respondents were about to lose their place of residence. There is undisputed written evidence and sworn testimony that Applicant PM and Respondent MC had been involved in a previous relationship. The agent for Respondent MC testified that based on her previous relationship with Respondent MC, Applicant PM was well aware that this manufactured home park operated by the corporate landlord had Rules that prevented the sub-letting of manufactured home park sites to others not named on the Tenancy Agreement.

Respondent MC approached the corporate landlord to determine if they would be willing to allow the Applicants to reside in the manufactured home as guests of Respondent MC (and the Estate) for the time period from March 15, 2018 until May 31, 2018. The corporate landlord entered into written evidence a copy of the Guest Agreement that the corporate landlord and Respondent MC entered into on March 12, 2018, allowing the Applicants to reside in the manufactured home from March 15, 2018 until May 31, 2018. Key features of this Guest Agreement were as follows:

22. The conditions listed in the Guest Agreement are as follows:

- a. The Landlord will permit the Guests to stay in the Owner's home on the condition that the Owner receives no money or services in exchange for the Guests to stay. The Park does not permit roommates, no subletting.*
- b. The Owner assumes full responsibility for the Guest's actions, or nonactions, and any consequences for the actions of the Guest will be imposed upon the Owner, up to and including a Notice to End Tenancy, if so warranted.*

c. The Guest may live in the Home until May 31, 2018, or an earlier date if the Park so decides, and that date will be provided to the Owner in writing...

The agent testified that she "believed" that Respondent MC provided a copy of this Guest Agreement to the Applicants. Both Applicants adamantly denied having been provided copies of this Guest Agreement.

Preliminary Matter - Jurisdiction to Consider the Application to Cancel the 10 Day Notice

The corporate landlord's 10 Day Notice issued to the Estate identified above was for unpaid rent for this manufactured home site owing from June 2018 in the amount of \$540.00. The agent for Respondent MC confirmed that this pad rental had not been paid for June, nor had any payment been made for this site to the corporate landlord for July 2018.

Legal counsel for the corporate landlord submitted written evidence maintaining that the Applicants had no relationship with the corporate landlord and that the issue of non-payment of rent was solely between the corporate landlord and their tenant, the Estate identified above as represented by Respondent MC. Legal counsel for the corporate landlord maintained that this application from the Applicants was not properly before me as the Applicants had no legal standing to file an application to cancel the 10 Day Notice. At the hearing, the legal counsel for the corporate landlord requested the issuance of an immediate Order of Possession and a monetary award against their tenant, the Estate represented by Respondent MC. I advised the parties that I could not consider the corporate landlord's request for a monetary award as no such application was before me, but that the 10 Day Notice seemed to be in order.

The Applicants only observation regarding their application to cancel the 10 Day Notice was that Respondent MC should have been applying the payments they made to him towards the rent owed to the corporate landlord.

Preliminary Matter - Analysis of Jurisdiction to Consider the Application to Cancel the 10 Day Notice

I agree with the position outlined by the legal counsel for the corporate landlord and the agent for Respondent MC that the Applicants had no legal standing whereby they could apply to cancel the 10 Day Notice. The Applicants are occupants and not tenants in this

manufactured home and as such their rights to occupy only extend to the point where the legal tenant, in this case the Estate of the deceased, remains in effect. The Guest Agreement entered into between the corporate landlord and Respondent MC was not intended to extend past May 31, 2018, and the Applicants' status as guests accepted as occupants of the manufactured home does not convey any status as tenants as defined under the *MHPTA*, the *Act* pursuant to which this application was submitted. For these reasons, I have no jurisdiction to consider the application from the Applicants to cancel the 10 Day Notice.

At the hearing, I advised the parties that I was planning to issue an Order of Possession in the corporate landlord's favour in response to the oral request from legal counsel representing the corporate landlord for an immediate Order of Possession. I was considering this request and my ability to make this Order because the 10 Day Notice met the requirements as to the form and content and there was no dispute from the agent of the legal tenant as to whether payments identified as owing in the 10 Day Notice had been made to the corporate landlord.

Section 48(1) of the *MHPTA* enables a landlord to obtain an Order of Possession under the following circumstances without having to apply for an Order of Possession directly pursuant to section 48(2) of the *MHPTA*:

- 48** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the manufactured home site if*
- (a) the landlord's notice to end tenancy complies with section 45 [form and content of notice to end tenancy], and*
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice...*

After reviewing the written submissions further and carefully examining my statutory authority to issue an Order of Possession under these circumstances, I discovered that my ability to do so is limited to an application by a tenant. I accept the position taken by the legal counsel for the corporate landlord that the Applicants are not tenants under the *MHPTA* and thus had no legal right to apply to cancel the 10 Day Notice. With no application pursuant to section 48(1) of the *MHPTA* before me, I am also without jurisdiction to grant an Order of Possession pursuant to section 48(1) of the *MHPTA*. While I dismiss the current application by the Applicants, I am without jurisdiction to issue an Order of Possession requiring the tenant and all occupants on the property to

vacate the rental premises. The landlord would need to make a separate application to obtain such an outcome. While I realize that this finding varies from the verbal instructions provided to the parties at the hearing, my finding that the Applicants had no legal basis as tenants to apply to cancel the 10 Day Notice leaves me with no statutory authority to issue an Order of Possession to the corporate landlord as I lack jurisdiction to consider this portion of the application before me.

Background and Evidence Specific to the Application for a Monetary Award

The agent and the Applicants agreed that payments of \$350.00 and \$700.00 were made by the Applicants to Respondent MC for March and April 2018. Applicant RC gave undisputed sworn testimony that the Applicants requested receipts for these cash payments, but Respondent MC failed to issue receipts for these payments. The Applicants entered into written evidence a copy of an unsigned Tenancy Agreement that the tenants signed, but Respondent MC refused to sign at the beginning of what the Applicants maintained was a standard tenancy enabling them to stay in the manufactured home.

The agent testified that the arrangement between the Applicants and Respondent MC was for house-sitting and as short term guests to comply with the provisions of Respondent MC's Guest Agreement with the corporate landlord. Although the agent confirmed that payments of \$350.00 and \$700.00 were made by the Applicants to Respondent MC, the agent maintained that these were to compensate Respondent MC for all of the work that had to be done to have the manufactured home upgraded and repaired to meet the expectations of the Applicants. The agent did not dispute that work was performed by Applicant RC on the manufactured home, as RC is a contractor by trade. The agent testified that Respondent MC "dropped off" \$750.00 to the tenants in cash on or about April 25, 2018 to be applied towards materials that Applicant RC had purchased. The agent claimed that Respondent MC advised the Applicants that he did not want them to purchase anything else for this manufactured home as Respondent MC had most if not all of the materials himself and could give those to Applicant RC for use in the repair of the manufactured home.

The agent also maintained that the Applicants' reason for pursuing this application for a monetary award resulted from Respondent MC's unwillingness to sign fraudulent documents or provide fraudulent information to those dispensing shelter assistance payments that Applicant PM had been residing in the manufactured home for a much longer period of time than was the case.

The Applicants provided a series of receipts and invoices, as well as a timeline for work completed by Applicant RC that documented the 85 hours of work that he had undertaken from March 28, 2018 to May 3, 2018 (misstated as 2017 in their written evidence) for the repair of this manufactured home. The Applicants provided the following breakdown of their claim for a monetary award of \$3,600.00:

Item	Amount
Labour - 85 hours @ \$30.00 per hour = \$2,400.00	\$2,400.00
Receipts for Supplies	1,200.00
Total Monetary Order Requested	\$3,600.00

At the hearing, the Applicants agreed that Respondent MC had allowed them to forego making a payment in May 2018 to him in exchange for some of the materials they had purchased since they moved into the manufactured home in March 2018. This would have been an allowance of \$700.00 of the amount requested in this application by the Applicants.

Analysis - Application for a Monetary Award

Despite the wording of the Guest Agreement entered into between the corporate landlord and Respondent MC on behalf of the Estate, I find on a balance of probabilities that the Applicants and Respondent MC entered into an agreement that falls within the jurisdiction of the *RTA*. In this regard, I find the direct sworn testimony of the Applicants that they had never been provided with a copy of the Guest Agreement by Respondent MC more credible than that provided by the agent for Respondent MC who could only say that she believed that a copy of that Agreement was provided to the Applicants.

I have also taken into consideration that no signed Tenancy Agreement between Respondent MC and the Applicants was completed. While the *RTA* does require those acting as landlords to create written tenancy agreements, oral agreements are still permitted under the *RTA*. In this case, I find that the Applicants provided more credible evidence that the \$350.00 and \$700.00 payments they made for the first month and a half of their occupancy of the manufactured home equated to Respondent MC's acceptance of rent as opposed to the account conveyed by the agent for Respondent MC. I do not accept that the house-sitting arrangement described by Respondent MC would lead to the Applicants' payments of \$350.00 and \$700.00 for the time that Respondent MC was devoting to upgrading the manufactured home and to pay for supplies that the Applicants were clearly requisitioning for this upgrading process. I

note that much of this money was to be paid back to Applicant RC for the supplies, furnishings and appliances that Respondent MC agreed that the Applicants could purchase through his social media messages and text messages entered into written evidence by the Applicants. I find that Respondent MC was accepting payments that were more similar to rental payments than to any reimbursement for his own time in dealing with the Applicants' requests for habitable living space in this manufactured home, which was in very poor shape when the Applicants took up occupancy there. I find that this tenancy requires a monthly payment of \$700.00 by the Applicants to the Estate identified above as represented by the Executor of that Estate, Respondent MC.

The extensive photographic evidence supplied by the Applicants revealed a manufactured home that was in a very poor state of repair at the time Respondent MC allowed the Applicants to commence living in the home. At that point, these photographs reveal that the manufactured home was barely habitable and in need of immediate repairs.

At the hearing, the agent for Respondent MC did not dispute that the social media messages and text messages entered into written evidence by the Applicants were exchanges that occurred between these parties. The agent maintained that at least some of these messages had been edited, such that important information was missing and did not reveal the full nature of these interactions. While the format of these messages does lead to some support for the agent's assertions in this regard, I find that this written evidence does reveal many situations where the Applicants communicated their requests for permission to purchase items necessary for the repair of the manufactured home or replacement of faulty or non-existent items such as appliances within the manufactured home. The Applicants' written evidence supports their assertion that Respondent MC had agreed to allow them to reduce payments that would become owing to him for the purchase of many of the supplies, materials and appliances (e.g., cooktop, stove) that they referenced in their social media messages and text messages.

For example, in a 3.35 p.m. message sent by Respondent MC on March 25, 2018, MC agreed to the Applicants' proposal to purchase the discounted cooktop, responding "Looks great. I'll take it off your rent if you want to leave it behind or not, if you don't." On March 30, 2018, Respondent MC sent the following message, which again leaves little doubt that at that time MC was referring to the monthly payments made by the Applicants as "rent."

Hi (PM)

Considering how much you and (T) have spent we can call next months rent May 2018 paid. Thank you for the money and work. Cheers. Looks like he's a talented guy...

In a March 30, 2018, social media message, Respondent MC added that he would keep an open mind towards reducing rent for the following month, which would have been June 2018, as well, in addition to the following statement:

...if you guys have spent 500+ for materials then I should pay at least the same for installation and do realize I'm getting a great deal...

Respondent MC also alluded to missing invoices and noted that he had a lot of material that could be used for the repairs, which the Applicants should ask him about before they purchased more material.

I find that the written evidence supplied by the tenants confirms that Respondent MC was fully aware that the Applicants were purchasing supplies and materials for use in the repair of the manufactured home and that he had given his approval for most if not all of these purchases. Whether or not they purchased every one of these items with Respondent MC's prior approval, I find that there is sufficient evidence to demonstrate that Respondent MC was not objecting to this pattern of allowing the Applicants to undertake these repairs, which would be deducted from their rent. There is also sufficient evidence that Respondent MC intended to compensate them for the supplies and materials they purchased.

I find only limited support for the Applicants' assertion that Respondent MC also committed to pay Applicant RC for his labour in undertaking the repair work. I find that any commitment that Respondent MC made to the Applicants for compensation was primarily for supplies and materials they purchased and for which they would be providing receipts as opposed to compensation for the labour involved in undertaking these repairs and upgrades. The primary specific reference to payment for labour was the March 30, 2018 social media message referenced above, where Respondent MC agreed that he should pay at least \$500.00 for installation of the work that Applicant RC was undertaking.

For the most part, it appears that the method of compensation for the supplies and materials purchased by the Applicants was to be by way of a set-off for fees that the Applicants would otherwise be expected to have paid Respondent MC. This provision lends further support to the Applicants' assertion that they had an actual tenancy

agreement with Respondent MC, as opposed to the claim made by the agent for Respondent MC that no such tenancy agreement between these parties existed.

I also note that the references to forgiveness of monies owing in exchange for the Applicants' purchase of supplies and materials is in stark contrast to the provisions of the Guest Agreement that Respondent MC had signed with the corporate landlord that prevented Respondent MC from charging rent for these premises.

Based on my consideration of the written evidence and the sworn testimony of the parties, I find that there was enough evidence of a pattern of communication established between the Applicants and Respondent MC to support the Applicants' claim that MC had agreed to compensate them for the supplies and materials they purchased for the repair and upgrading of the manufactured home. As the agent for Respondent MC did not dispute specific purchases made by the Applicants, I find that the Applicants are entitled to recover the \$1,200.00 in expenses for supplies and materials claimed in their application. I also allow a monetary award of \$500.00 for the labour involved in undertaking the repairs and renovations, the amount cited in Respondent MC's March 30, 2018 communication with Applicant PM.

I also find that the Applicants have admitted that they have received the benefit of staying in the manufactured home for May 2018, without making payments to Respondent MC for that month. This reduces the amount of the monetary award that would be issued to the Applicants from \$1,700.00 to \$1,000.00 (i.e., $\$1,700.00 - \$700.00 = \$1,000.00$).

There is also undisputed evidence that the Applicants remain in the manufactured home beyond the May 31, 2018 date when the corporate landlord's 10 Day Notice required the premises to be vacated. For this reason, I allow the Applicants to implement the \$1,000.00 monetary award issued in this decision by allowing them to reduce any rent that remains due to Respondent MC in his role as Executor for the Estate or becomes owing while they remain in this manufactured home by a total of \$1,000.00.

Conclusion

I dismiss the Applicants' application to cancel the 10 Day Notice issued by the corporate landlord as I have no jurisdiction to consider this portion of their application.

I find that monthly rent of \$700.00 is due on the first of each month for the tenancy established between the Applicants and the Estate as identified above and as represented by the Executor of that Estate, Respondent MC.

I allow the Applicants' a monetary award of \$1,000.00 against Respondent MC in his role as Executor for the Estate noted above. As the Applicants continue to reside in the manufactured home, I order that the \$1,000.00 monetary award is to be implemented by way of reducing any amount of rent currently owed by the Applicants or that becomes owing while they remain in this manufactured home by that amount.

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: August 1, 2018

Residential Tenancy Branch