



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MNDCT, ET, FFL

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated July 13, 2018
- b. An order for a monetary order in the sum of \$5000

The Application for Dispute Resolution filed by the landlord seeks the following:

- a. An order for the early end to the tenancy
- b. An order to recover the cost of the filing fee?

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 one month Notice to End Tenancy dated was sufficiently served on the Tenant. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other.

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether an arbitrator has the authority under the Residential Tenancy Act to hear these claims?
- b. If so whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated July 13, 2018?
- c. Whether the tenant is entitled to a monetary order and if so how much?
- d. Whether the landlord is entitled to an order for the early end to the tenancy?
- e. Whether the landlord is entitled to an order to recover the cost of the filing fee?

Grounds for Termination:

The Notice to End Tenancy dated July 13, 2018 relies on the following grounds:

- Tenant is repeatedly late paying rent
- ...
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord

Background and Evidence:

The parties entered into an agreement in writing for the purchase and sale of a Recreational vehicle (5th wheel) located in a manufactured home park. The transaction was evidenced in writing by a document titled PROMISSORY NOTE and dated January 3, 2018. The tenant is identified as the Borrower and the landlord (including her husband) are identified as the Lender. The document includes the following terms:

- The Recreational vehicle is identified including its serial number.
- The Borrower promises to pay to the Lender the principal sum of \$21,450 together with all charges and interest.
- The Borrower shall make biweekly payments of principal and interest at a rate of 3% per annum of \$284.44.
- The Note is a "Rent to Own" contract. Upon receipt of final payment and/or received full amount of \$21,450 the lender will issue full owners registration transfer of title.
- The Borrower shall be responsible for the Property Lease Payment as required by the manufactured home park. The Borrower shall pay the lease payment to the lender each month upon receipt of the invoice from the manufactured home park. .
- The lender exercise's the right to cancel this contract as a "Rent to Own" if a loan payment and/or a Lease payment is not received by the 28th day of any month by the Borrower. If such cancellation occurs, all payments received prior to the default date shall become the property of the Lender as Rental Payments and the Lender revokes any further obligation to release registration/ownership of the said Recreational vehicle as stated above. Should this default occur, the relationship between Lender and Borrower will become a "Rental Agreement." The relationship legalities will be referred to the Landlord/Tenant Act.

The landlord testified the Lease Payment paid by the tenant to her and subsequently paid to the manufactured home park varied as it included electricity which changed from time to time. The spread sheet included by the landlord in the evidence indicated it varied between \$482 and \$578 per month.

The landlord testified there have been 8 late payments between February 2018 and July 2018. Some of the late payments relate to the bi-weekly payments and other late payments relate to the Lease Payment to the manufactured home park.

The landlord produced a one month Notice to End Tenancy served on the Manufactured Home Park Tenancy Act dated July 13, 2018 served on them by the manufactured home park setting the end of tenancy for August 31, 2018. She is the tenant in that Notice. The grounds on the Notice to End Tenancy state that the Tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and that the Tenant has assigned or sublet the rental unit/site with the landlord's written consent.

Witness #1 is the Assistant Manager of the manufactured home park. He testified they received complaints from other residents in the park of a noise disturbance caused by the tenant and her guests a couple of days prior to July 13, 2018.

The tenant disputes much the landlord's evidence. In particular she stated the landlord agreed with the tenant that they would work with the Tenant and would not rely provided the late payments were not too extreme. She produced text messages that supported this. She further testified the late payments were in part caused by a work related injury. She disputed the evidence of the late that the party that occurred in July was significant stating the tenant who initially complained provided evidence that it was not that significant.

Jurisdiction:

Section 2 of the Residential Tenancy Act provides as follows:

"What this Act applies to

2(1) Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, rental units and other residential property.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.”

The definition of “tenancy” and “tenancy agreement” in section 1 of the Act provides as follows:

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

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Policy Guideline #27

“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;
- there was a right to purchase in a tenancy agreement and whether it was exercised.”

After carefully considering all of the evidence I determined that the Residential Tenancy Act does not apply and that I do not have jurisdiction for the following reasons:

- The essence of the contract between the parties involves the sale of a Recreational Vehicle from the Lender to the Borrower over time. The only document evidencing the contract was the Promissory Note. The purchase price is set out. The bi-weekly payments are to be applied to the payment of the purchase price, interest and other charges. It is not to be applied as rent.
- The Lender is obliged to transfer titled of the Recreational Vehicle to the Borrower upon payment of the purchase price. The bi-weekly payments involve

an agreement to transfer an interest higher than the right of possession. This is not a residential tenancy relationship.

- Many of the terms that are required by the Residential Tenancy Act are not included in the contract between the parties. Section 13 of the Residential Tenancy Act includes the following:

Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(a) the standard terms;

(b) the correct legal names of the landlord and tenant;

(c) the address of the rental unit;

(d) the date the tenancy agreement is entered into;

(e) the address for service and telephone number of the landlord or the landlord's agent;

(f) the agreed terms in respect of the following:

(i) the date on which the tenancy starts;

(ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;

(iii) if the tenancy is a fixed term tenancy, the date on which the term ends;

(iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;

(iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;

(v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;

(vi) which services and facilities are included in the rent;

(vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

- I determined that while the Promissory Note purports to convert what is in essence a contract for the sale of a recreational vehicle into a residential tenancy agreement is not valid to the extent that it then becomes a residential tenancy agreement. The intention of the parties is for the sale of an ownership interest over time and not the rental of possession of the RV.

Determination and Orders:

As a result I determined that the Residential Tenancy Act does not apply and I do not have jurisdiction. I declined to hear the matter for lack of jurisdiction.

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 Residential Tenancy Act.

Dated: September 18, 2018

Residential Tenancy Branch