



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC, MNDC, OLC, MNSD, FF

### **Introduction:**

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

- a. An order to cancel the two month Notice to End Tenancy dated June 5, 2019
- b. An order to suspend or set conditions on the landlord's right to enter the rental unit or site
- c. A monetary order in the sum of \$35,000
- d. An order for repairs to be made to the site or property have been requested from the landlord
- e. An order that the landlord return personal property.

The Respondent failed to appear at the scheduled start of the hearing which was 9:30 a.m. on July 19, 2019. The Applicant was present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the schedule start time in order to enable the landlord to call in. The Respondent failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The Applicant was given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

On the basis of the solemnly affirmed evidence presented at the hearing a decision has been reached. All of the evidence was carefully considered.

The Residential Tenancy Branch permits a party to serve another by mailing, by registered mail to where the other party resides. The Policy Guidelines provide that a party cannot avoid service by failing to claim their registered mail. I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Respondent by mailing, by registered mail to where the Respondent resides on June 10, 2019 and that it was sufficiently served even though the Respondent failed to pick up the Application for Dispute Resolution.

### **Preliminary Matter:**

I determined the first issue to consider is whether the Residential Tenancy Branch has jurisdiction in this matter.

Background and Evidence:

The Applicant testified that the Respondent is her daughter.

She further testified that she entered into an oral contract with the Respondent for the purchase of the trailer. The sale price was agreed at \$65,000. The Applicant made a down payment of \$25,000 in early 2018. She moved into the trailer in August 2018. She has made payments of \$500 per month to the Respondent which was to be applied to the purchase price. As well she has paid the pad rent directly to the owner of the manufactured home park.

The Respondent served a 2 month Notice to End Tenancy on the Applicant for landlord use. The Respondent and her husband are separating. The Applicant stated she would be prepared to give up her ownership claim and move provided the Respondent reimburses her for the amounts she has paid.

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

Analysis

The Respondent failed to attend the hearing. After carefully considering the evidence presented at the hearing I determined that the Applicant has an ownership interest in the trailer and that the Residential Tenancy Branch does not have jurisdiction. I determined that the Applicant agreed to purchase the trailer on the payment of \$65,000. The Applicant made a down payment of \$25,000 and subsequent payments amounting

to \$500 a month which was to be applied against the purchase. The Applicant also paid the pad rent. I determined the oral agreement involved the transfer of an interest higher than the right to possession.

As a result I determined that I declined to hear the Applicant's claims for lack of jurisdiction. The effect of this decision is that the 2 month Notice to End Tenancy given by the Respondent is of no force and effect as this is not covered under the Residential Tenancy Act.

Both parties are encouraged to seek legal help to assist them in dealing with this situation.

**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: July 19, 2019

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Residential Tenancy Branch