



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Applicant on October 10, 2020 (the “Application”). The Applicant applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Applicant appeared at the hearing. J.G. appeared for the Respondents. I explained the hearing process to the parties. The parties provided affirmed testimony.

The Applicant submitted evidence prior to the hearing. The Respondents did not. I addressed service of the hearing package and Applicant’s evidence and J.G. confirmed receipt of these on behalf of the Respondents.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties and all documentary evidence submitted. I have only referred to the evidence I find relevant in this decision.

Preliminary Issue – Jurisdiction

A preliminary issue arose in relation to whether there was a tenancy agreement covered by the *Residential Tenancy Act* (the “Act”) in this matter.

The Applicant testified as follows. There was a rent to own agreement between her company and the Respondents from 2015 to 2018 for a mobile home owned by the Respondents. She was going to purchase the mobile home but was unable to and the rent to own agreement expired in 2018. The parties then entered into a verbal tenancy agreement for the Applicant to rent the mobile home from the Respondents. The Applicant rented the mobile home with the intention of subletting it to others while it was

being sold. The Applicant did sublet the mobile home to others from 2018 to 2020. The Applicant never lived in the mobile home.

The Applicant further testified as follows. The mobile home was on property owned by P.B. She paid for expenses relating to the mobile home with the understanding that these would be reimbursed once the mobile home was sold. The Applicant paid rent to the Respondents. She paid pad rental directly to P.B. from 2018 to 2020. She paid property taxes and insurance for the mobile home. The Respondents sent her invoices for the property taxes and insurance and she paid these directly. There was no security deposit paid. The tenancy was meant to be for a one year term. The Applicant paid rent to the Respondents when the subtenants vacated. The tenancy ended with the sale of the mobile home in August of 2020.

The Applicant submitted that there was a tenancy agreement covered by the *Act* between the parties from 2018 to 2020. The Applicant submitted that the definition of a tenant under the *Act* includes someone paying rent whether they live in the rental unit or not.

J.G. provided the following testimony. There was no agreement between the parties. The Applicant owns a business which enters into rent to own agreements. The Applicant knew his mother, Respondent D.G., through work. The Applicant never lived in the mobile home. His mother was looking for a realtor to sell the mobile home and went to the Applicant for this purpose. The mobile home was never rented by the Applicant. The mobile home was rented to other tenants in 2018.

J.G. agreed the mobile home is on private property owned by P.B. J.G. testified that the Respondents paid pad rental to P.B. J.G. acknowledged there was a rent to own agreement between the Applicant's company and the Respondents for three years.

At first, J.G. acknowledged there were payments made by the Applicant to the Respondents between 2018 to 2020. J.G. then testified that the renters in the mobile home in 2018 paid the rent. J.G. then testified that no payments were made by the Applicant to the Respondents between 2018 and 2020. J.G. then testified that the Applicant passed rent from the tenants living in the mobile home to the Respondents.

After hearing the parties on the jurisdiction issue, I told the parties I would decide this issue and reconvene the hearing if I determined the *Act* applies and the RTB has jurisdiction over this matter.

Analysis

Section 2 of the *Act* states:

2 (1) Despite any other enactment but subject to section 4...this Act applies to tenancy agreements, rental units and other residential property.

The relevant terms are set out in section 1 of the *Act* and include:

"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...

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

"tenant" includes

- (a) the estate of a deceased tenant, and

(b) when the context requires, a former or prospective tenant.

I am satisfied there was a rent to own agreement between the Applicant's company and the Respondents from 2015 to 2018 as I understood the parties to agree on this. The *Act* does not apply to rent to own agreements given they deal with ownership interests (see Policy Guideline 27 page 5).

The Applicant submits that the nature of the relationship between the parties changed in 2018 and that the parties entered into a verbal tenancy agreement covered by the *Act*. J.G. disputed this. Pursuant to rule 6.6 of the Rules of Procedure, the Applicant has the onus to prove there was a tenancy agreement covered by the *Act* between the parties. I am not satisfied the Applicant has provided sufficient evidence to meet this onus.

Where parties disagree about whether there was a tenancy agreement covered by the *Act* between them, I would expect to see documentary evidence to support that there was a tenancy agreement covered by the *Act* entered into. This is particularly so in these circumstances where the Applicant acknowledges that there was previously a rent to own agreement between the parties, which is not covered by the *Act*, and where the Applicant never lived in the rental unit. The only documentary evidence the Applicant submitted to support her position about a tenancy agreement is a statement from P.B. I am not satisfied this is sufficient as I am not satisfied a third party would know what verbal agreements were made between the Applicant and Respondents.

Further, I find that the actions of the Applicant including not living in the mobile home, paying pad rent to P.B. separately from paying rent to the Respondents, paying property taxes and paying insurance are not consistent with the Applicant having been a tenant.

In the absence of further documentary evidence to support the position of the Applicant about a tenancy agreement, I am not satisfied the Applicant and Respondents entered into a tenancy agreement covered by the *Act* in 2018. Given this, I am not satisfied the *Act* applies to the parties and decline jurisdiction to hear the Applicant's claims.

Conclusion

I am not satisfied the *Act* applies and therefore decline jurisdiction to hear the Applicant's claims. Given this, there is no need to reconvene the hearing.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 27, 2021

Residential Tenancy Branch