



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Elk Valley Homes  
Cole Developments Ltd dba Fernie Mobile Home  
Park and [tenant name suppressed to protect privacy]

## **DECISION**

### **Introduction**

This hearing was convened in response to an application by the Applicant pursuant to the *Manufactured Home Park Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the Respondent’s compliance - Section 55;
2. An Order for the recovery of the filing fee - Section 65; and
3. Other.

The Respondents did not attend the hearing. I accept the Applicant’s evidence that the Respondent was served with the application for dispute resolution, notice of hearing and evidence (the “Materials”) by registered mail on or about October 12, 2022 in accordance with Section 82 of the Act. No tracking number for this postal service is provided. Section 83 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Respondents are deemed to have received the Hearing Package on October 17, 2022. The Applicant was given full opportunity to be heard, to present evidence and to make submissions.

### **Issue(s) to be Decided**

Is there a valid tenancy agreement?

Has the Respondent failed to comply with the Act or tenancy agreement?

Is the Applicant entitled to recovery of the filing fee?

### Background and Evidence

The Respondent verbally agreed on March 12, 2021 to provide the Applicant with a pad site for the purpose of selling a new mobile home that would be placed for sale on the site by the Applicant. The pad was to be available for the sale after the site was repaired from a fire that caused the death of the tenant for that pad site. Because of the death of the tenant the exact date for the availability of the pad site was unknown at the time of the verbal agreement but it was expected to be available by the spring of 2021. The agreement included that the monthly rental cost for the pad site would be payable by the purchaser of the mobile home upon the purchase of the home. No rents were payable by the Applicant. No monies exchanged hands for this verbal agreement. The Applicant has not paid any rental monies for the site and has not been given possession of the site. The Applicant seeks an order that the Landlord for the Landlord to comply by providing the Applicant with possession of the pad site. It is noted that no claim for an order of possession has been made in the application.

### Analysis

Section 1 of the Act provides that “**tenancy agreement**” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities. A contract or agreement is binding where there is an offer, an acceptance of the offer and consideration given. Section 6(3)(c) of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. The Applicant’s evidence of the terms of the agreement is vague, particularly in relation to when the Application might have possession of the site. Further, no monies were paid to or collected by the Respondent indicating that no consideration was given for the verbal exchange to be considered a binding contract. Finally, I do not consider that the verbal exchange was for anything other than a sale location. For these reasons I find that there is no binding agreement for the use and possession of the site by the Applicant and I therefore dismiss the application in its entirety.

Conclusion

The application is dismissed.

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 17, 2023

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Residential Tenancy Branch