



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNR

Introduction

This hearing was scheduled in response to an application to set aside a Notice to End Tenancy for Unpaid Rent.

Both parties were represented at the hearing. They were each provided with the opportunity to make submissions in regard to the issue of jurisdiction.

Preliminary Issue

Before considering the merits of the Application for Dispute Resolution I must determine whether this application has jurisdiction under the *Residential Tenancy Act (RTA)* or the *Manufactured Home Park Tenancy Act (MHPTA)*.

A copy of a Contract of Purchase and Sale was submitted in evidence. In the contract the applicants made an offer to purchase a manufactured home for the sum of \$39,900.00, to be paid in accordance with a payment schedule that is attached to the contract. The contract was signed by the male agent for the respondent and by both applicants on, or about, October 06, 2004.

The payment schedule declares that the purchasers made an initial payment of \$2,125.00 and that they were required to make ninety-six monthly payments of \$890.00. The monthly payments include a \$250.00 pad rental payment, a \$589.57 loan payment, and a \$50.43 payment towards taxes. The payment schedule declares that the first monthly payment is due on November 01, 2004 and that the monthly payments are to continue until October 01, 2012. The contract declares that the purchasers will forfeit all monies paid into the property if the purchasers elect to recant on the purchase.

In my view the Contract of Purchase and Sale clearly grants the applicants an interest in this manufactured home that goes beyond exclusive possession and occupation, as title of this manufactured home transfers to the applicant if the conditions of the contract are met.

The Landlord submitted numerous documents, such as a copy of an Application to Lease that was completed on October 05, 2004; a copy of an undated Tenancy Agreement Conditions form that outlines some terms and conditions that are typically

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associated to a tenancy but is clearly not a written tenancy agreement as defined by section 13(2) of the *Act*; a copy of an information document for “lease to own tenants”, dated October 05, 2005, which refers to the applicant as the purchaser and to the respondent as the landlord; a copy of a Condition Inspection Report that was completed several years after this tenancy began; and several other documents that refer to the respondents as tenants.

Although these documents establish that the applicant and the respondents behaved, at times, in a manner that was similar to a tenancy, I cannot conclude that the parties have a tenancy agreement. In reaching this conclusion I was strongly influenced by the absence of a formal tenancy agreement and the existence of a signed Contract of Purchase and Sale. Although there is ambiguity in the terms used by these parties and in the manner they behaved, I find that the Contract of Purchase and Sale clearly established that the respondents have a financial interest in this manufactured home.

A tenancy agreement is a transfer of interest in land and/or buildings. The interest that is transferred in a tenancy agreement is the right to possess the land and/or buildings. When a tenant takes an interest in the land and/or buildings which is higher than the right of possession, such as part ownership, than a tenancy agreement has not been entered into. In these circumstances, I find that the Contract of Purchase and Sale clearly establishes that the applicants will own the manufactured home in 2012 if they meet the terms of the Contract of Purchase and Sale. This clearly establishes that part of the money that changed hands at the beginning of this agreement and that continues to change hands is part of the purchase price, and that a tenancy agreement has not been entered into.

I find that the applicants have an interest in this manufactured home that is beyond the *RTA* or the *MHPTA*. As a result, I decline to accept the Application for Dispute Resolution, as I have no jurisdiction under to determine the merits of this matter.

Conclusion

I dismiss the applicant's Application for Dispute Resolution. The matter does not fall under the *RTA* or *MHPTA* as the applicant has an interest in the property that exceeds that of a tenant. Either party has the option of resolving any dispute in relation to their agreement through the Supreme Court of British Columbia.

Dated: July 29, 2009.

Dispute Resolution Officer