



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

matter regarding Lombardy Mgmnt
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution seeking to cancel a notice to end tenancy and an order of possession.

The hearing was conducted via teleconference and was attended by the applicant, his two advocates and an agent for the respondent.

This matter was originally adjudicated by another Arbitrator at a hearing conducted on November 23, 2016. The applicant sought a Review Consideration of the resulting decision from that hearing and was granted a new hearing. The purpose of this hearing is to determine if that original decision and order should be confirmed, set aside or varied in any way.

At the outset of the hearing the applicant sought to have an additional file (referenced on the front page of this decision) joined to be heard during this hearing. However, that file contains requests for a number of items including compensation; repairs; emergency repairs; a rent reduction; restrict the respondent's use of property; and other claims. I find all of these claims are not related to this current Application.

Furthermore this hearing was only scheduled as a result of the Review Consideration noted above and can only deal with the matters that were before the original Arbitrator. As such, I declined to include the other matters related to the applicant's additional file. I note the hearing for that file will continue unless the applicant contacts the Residential Tenancy Branch to withdraw that Application, particularly in light of the decision that follows on this Application.

At the outset of the hearing the parties confirmed that the only relevant agreement between the parties related to the occupation of the manufactured home park site is the document submitted by both parties entitled Rent to Own Contract signed by the applicant and the owner of the manufactured home park on May 11, 2016.

The parties agreed that this contract included that the applicant would pay the respondent \$630.00 on the 1st of each month beginning May 1, 2016. The contract includes the following clauses:

- The parties agree the purchase price of the property is \$7,500.00;
- The parties agree that \$300.00 of each month's rent payment shall be applied towards purchase of the property;
- The parties agree that ownership of the property shall transfer to Renter upon Renters' completion of 25 payments as described above.

I note that there is no mention of any pad rental fees in this contract. However, the agent for the respondent confirmed that \$300.00 each month was to towards the purchase of the manufactured home and that \$330.00 each month would be applied to the pad rental. The applicant confirmed that this was the current agreement.

Residential Tenancy Policy Guideline 27 states that if the relationship between the parties is that of seller and purchaser of real estate, the Legislation would not apply as the parties have not entered into a "Tenancy Agreement" as defined in section 1 of the *Manufactured Home Park Tenancy Act (Act)*. It does not matter if the parties have called the agreement a tenancy agreement. If the monies that are changing hands are part of the purchase price, a tenancy agreement has not been entered into.

Similarly, a tenancy agreement is a transfer of an interest in land and buildings, or a license. The interest that is transferred, under section 1 of the *Act*, is the right to possession of the manufactured home park site. If the tenant takes an interest in the land and buildings which is higher than the right to possession, such as part ownership of the premises, then a tenancy agreement may not have been entered into. In such a case the RTB may again decline jurisdiction because the *Act* would not apply.

In the case of a tenancy agreement with a right to purchase, the issue of jurisdiction will turn on the construction of the agreement. If the agreement meets either of the tests outlined above, then the *Act* may not apply. However, if the parties intended a tenancy to exist prior to the exercise of the right to purchase, and the right was not exercised, and the monies which were paid were not paid towards the purchase price, then the *Act* may apply and the RTB may assume jurisdiction. Generally speaking, the *Act* applies until the relationship of the parties has changed from landlord and tenant to seller and purchaser.

In the case before me, I find the parties have entered into an agreement that includes an agreement to transfer the subject manufactured home and at least a portion of the monies changing hands relates to its purchase price. As such, I find the agreement does not fall within the jurisdiction of the *Manufactured Home Park Tenancy Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and an order of possession, pursuant to Sections 40 and 47 of the *Act*.

Conclusion

Based on the above, I find that the original decision and order issued on November 23, 2016 must be set aside. In addition, I decline to hear matters set forward in this Application for Dispute Resolution for want of jurisdiction.

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

Dated: January 10, 2017

Residential Tenancy Branch