



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNL, FF

### **Introduction:**

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the two month Notice to End Tenancy dated April 30, 2018 on the basis that the Residential Tenancy Branch does not have jurisdiction as her relationship with the landlord is a rent to own and not a residential tenancy.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 2 month Notice to End Tenancy was personally served on the Tenant on April 30, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was served on the landlord by mailing, by registered mail to where the landlord resides on May 10, 2018. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided:**

The issue to be decided is whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated April 30, 2018?

### **Background and Evidence:**

The applicant moved into the manufactured home in February 2016. The tenant testified that it was originally going to be a tenancy. However, she was advised by the park manager that tenants were not permitted and the only way the park owner would agree to her remaining in the rental unit is if she became an owner or that she has a rent to own agreement with the owner of the manufactured home. .

The tenant testified there was an oral contract between the landlord and the tenant in which the Tenant would pay \$10,000 to upgrade the manufacture home including the construction of pad foundation repairs, skirting etc., pay the pad rent when due and pay the landlord additional sum that was to be applied to a purchase price (which involved a further payment of \$38,000).

The tenant refers to a document given by the landlord to the park owner titled Request for Consent to Assign and Manufactured Home Site Tenancy Agreement in which the landlord signed requesting the park owner to assign the pad rental agreement to the applicant who has agreed to purchase the manufactured home from the landlord.

The tenant initially paid the paid rent of \$466 to the park owner and a further sum of \$184 to the landlord by way of a cash payment. In March 2017 the pad rent was increased to \$483. The tenant paid this sum to the park owner and the sum of \$167 to the landlord. There was a concern that the property taxes had not been paid. In July 2017 the tenant paid \$250 per month to the landlord to cover property taxes. In March 2018 the tenant paid pad rent of \$540 and a further \$250 to the landlord.

The landlord disputes this saying this testimony saying there was no agreement for the sale of the manufactured home and there is no rent to own agreement. The parties had discussion about the sale to the applicant but there was never any agreement. The tenant paid for the cost of the skirting etc. which totalled \$8671 as the landlord did not have the money to make those upgrades and the upgrades were necessary before the tenant moved in. The landlord testified there is no written rent to own agreement as one would expect in this situation.

The landlord testified she intends to sell the home she is presently living in and wants to move back to live in the manufactured home.

Grounds for Termination:

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

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 relationship between the parties is confusing and uncertain. Both parties failed to take necessary steps to properly protect their respective interests. However, after carefully considering all of the evidence presented by both parties I determined that the relationship between the parties involves the sale of a manufactured home and is not a residential tenancy for the following reasons:

- The tenant paid over \$8600 for the installation of skirting and other upgrades at the time she moved into the rental unit. This is evidence of a relationship more complex than the rental of a manufactured home as one would not expect a tenant to make such a payment.
- I accept the evidence of the Tenant that the park manager advised the Tenant that she could not live in the park if she was a renter. The park was reserved for owners or those who had a rent to own.
- The landlord signed a document that was titled Request for Consent to ASSIGN a manufactured home site tenancy agreement where the landlord represents that the applicant has made an Offer to Purchase and request the park owner's consent to assign the tenancy agreement.
- Since 2016 the tenant made all pad rents directly to the park owner as well as a payments to the landlord.
- The landlord has a legal obligation under the Residential Tenancy Act to prepare a written tenancy agreement. The landlord failed to prepare such an agreement.
- I understand the submission of the landlord that if this was a rent to own agreement one would have expected a detailed purchase agreement. However, in my view given the extensive work paid for by the tenant and payments made indicate the relationship is much more than the rental of a manufactured home.
- The tenant has relied on the understanding she has with the landlord that she has a rent to own oral agreement with the landlord by making further improvements to the manufactured home.

- Finally, if the landlord's submission was accepted it was result in an unjust windfall in favour of the landlord of \$8600 for upgrades and additional improvements made to the manufactured home.

As a result I determined the relationship between the parties involves a transfer of an ownership interest to the applicant and that the Residential Tenancy Act does not apply.

Conclusion:

I determined that I do not have jurisdiction and according I decline to hear the matter.

**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: June 29, 2018

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Residential Tenancy Branch