



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: CNC, MNR, MNDC, MNSD, LRE, LAT, RR, & FF

Introduction:

This hearing dealt with an application by the tenant seeking to have a one month Notice to End Tenancy for cause set aside. The tenant is also seeking the recovery of costs for emergency repairs, aggravated damages, the return of his security deposit plus interest, for conditions to be set on the landlord's right to enter the rental unit and a request allowing the rent to be reduced due to the landlord's failure to complete repairs or provide services or facilities.

The hearing was originally scheduled to be heard on December 24, 2008; however, at the written request of both parties the hearing was rescheduled to January 19, 2009. The landlord failed to appear for the hearing.

The tenant has provided evidence which demonstrates that the parties entered into both a residential tenancy agreement and a contract to purchase the same property. However, the "rent" paid the tenant was being paid towards an interest in the property and not for the pursue of a residential tenancy which is solely for the possession of the rental unit and not the land. I note that the contract to purchase includes the term that the property is being leased for the period of August 1, 2008 to January 31, 2009 for the sum of \$1500.00 per month plus the cost of gas and hydro. The contract to purchase also stipulates that the amounts through the lease period would be taken from the agreed purchase price once the contract was completed.

As a result, I find that the tenant's claims in this application are not within my jurisdiction as the claims are arising out of conditions and obligations under the contract to purchase.

Although the tenant claims to have entered into a residential tenancy agreement, I find that the purpose of the purchase of the property was for the tenant's business. I find that the use of the premises as living accommodations was secondary.

I have determined that this dispute resolves around a failed option to purchase and a commercial lease and that the use of the premises as living accommodation was only secondary. I find that the property was lease primarily for commercial use as part of the contract purchase and the issues identified in this dispute are excluded from this *Act* pursuant to section 4 which states:

- (d) living accommodation included with premises that
 - (i) are primarily occupied for business purposes, and
 - (ii) are rented under a single agreement,

I find that I do not have the jurisdiction to consider this application.

Conclusion:

The tenant's application is dismiss as not having jurisdiction under the *Act*.

Dated February 10, 2009.

Dispute Resolution Officer