

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a notice to end tenancy for unpaid rent.

Service of the hearing documents, by the applicants to the respondent(s) , was done in accordance with section 89 of the *Act*, sent via registered mail on March 24, 2009. Mail receipt numbers were provided in the applicant's evidence. The respondent was deemed to be served the hearing documents on March 29, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both parties appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Jurisdiction
- If the Dispute Resolution Officer finds that the Residential Tenancy Board has jurisdiction to hear this application, then is the tenant entitled to an order to cancel a notice to end tenancy for unpaid rent.

Background and Evidence

The female applicant testified that she entered into a purchase agreement with her spouse to purchase the home for \$385,000.00 from the respondent.

The applicants testified that at the time the contract of purchase and sale was signed the respondent was told that the applicants could not qualify for a mortgage which is why they entered into a rent to own agreement with the landlord. A \$10,000.00 deposit was issued to the respondent on August 2, 2008 and a second deposit, dated August 9, 2008 in the amount of \$30,000.00, was given to the respondent. Both payments were to be held in trust and applied against the purchase price of the house.

The male applicant testified that it wasn't until September 1, 2008 that the respondent approached the applicants and told them that they needed to sign a tenancy agreement to finalize the paperwork for the rent to own option of their agreement.

The respondent testified that the applicants also signed an Option to Purchase. The respondent faxed a copy of the additional Option to Purchase to the Residential Tenancy Branch. The respondent testified that the Option to Purchase was signed on August 15, 2008 and that it did not form any part of a Residential Tenancy Agreement. The respondent feels that the tenancy agreement is considered a separate contract, not related to the purchase agreements, and that the *Residential Tenancy Act* applies.

The applicants testified that they did not have a copy of this 4 page Option to Purchase agreement the respondent was referring to.

Analysis

During the hearing the respondent faxed the Residential Tenancy Branch a copy of a 4 page document, which he referred to as an Option to Purchase, which is dated August 15, 2008. So as not to prejudice either party, a copy of the aforementioned document is attached to this decision.

The documentary evidence supports the applicants' testimony that they entered into an agreement to purchase the residence and agreed to rent to own the residence.

I find that the evidence shows that the intension of the parties, at the onset, was that of seller and purchaser of real estate which excludes jurisdiction to hear this application pursuant to The Residential Tenancy Policy Guideline 27. I find that I do not have authority under the Act, to determine the matters brought before me on the basis of jurisdiction, and dismiss the application without leave to reapply.

Conclusion

I HEREBY DISMISS the application without leave to reapply.

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: April 24, 2009.

Dispute Resolution Officer