



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNR

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent purportedly issued under section 46 of the Residential Tenancy Act, dated September 21, 2009, and effective October 1, 2009. Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on September 28, 2009, the Respondent Landlord did not appear.

Issue(s) to be Decided

The tenant was seeking to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent and the arrears were stated to be \$66,500.00.

The issue to be determined based on the testimony and the evidence is whether or not the 10-Day Notice to End Tenancy for Unpaid Rent was supported and enforceable under the Act or whether it should be cancelled.

Preliminary Issue- Jurisdiction

The tenant testified that no rent was in arrears and that the Ten-Day Notice should therefore be cancelled. The tenant stated that there was a previous hearing between the parties on the landlord's application which was heard on

(Date), 2008 in which the landlord was successful in receiving an Order of Possession and Monetary Order. According to the tenant, an application had thereafter been made to the Supreme Court and, despite the decision and the Order of Possession issued by the Dispute Resolution Officer at the dispute resolution hearing on (Date), 2008, the Court had subsequently determined that the tenant could remain in the residence. The Supreme Court decision being referred to by the tenant was not placed in evidence for the purpose of this hearing and the details are unknown.

However, in reviewing the decision of Dispute Resolution Officer, (DRO), of (Date), 2008, I find that the landlord was previously granted an Order of Possession and a monetary order for \$25,100.00. I find that during the previous hearing there was no discussion about jurisdiction and evidently this topic was not brought up as an issue during the proceedings at that time. I find that the decision of (Date), 2008 did not specifically deal with jurisdiction.

The proceedings before me today on the tenant's application first required a determination in regards to whether or not this tenancy relationship is governed by the provisions of the Residential Tenancy Act. The issue of jurisdiction arose based on the tenancy agreement placed in evidence by the tenant, the nature of which I found may impact my authority to hear and determine this application.

Section 1 of the Act has a definition of "*landlord*" in relation to a tenancy that would include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord: (i) permits occupation of the rental unit under a tenancy agreement; or (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

A tenancy agreement is a transfer of an interest in land and buildings, or a license to occupy and the interest being transferred, under section 1 of the Act, is only the right to possession of the residential premises. 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 the contract would not be a tenancy

agreement under the Act, regardless of whether the parties have chosen to label this document as a “*Tenancy Agreement*”. In the above circumstances, the dispute resolution officer would not have the authority to hear nor determine the matter under the Residential Tenancy Act.

In the case before me, the tenant had placed into evidence a 14-page document titled: “*SECOND TENANCY AND OPTION TO PURCHASE AGREEMENT*”. In reviewing this contract, I find that provisions in this agreement dealt with some issues not in compliance with, nor relevant to, the Residential Tenancy Act and that related to other considerations beyond a tenancy relationship.

Although I find that the contract contained a section titled “*Article 2 Tenancy*” a portion of which states, “*(DR) hereby agrees to rent the land to (BC), and (BC) hereby agrees to rent the land from (DR) under the terms and conditions set out herein.*”, I find that the section neglected to contain the mandatory standard terms required in a legal tenancy agreement under section 13(2)(a) of the Act and section 13 of the Regulations.

Moreover, I find that numerous provisions related specifically to the purchase of the land and residence, including payments to be allocated to an ownership interest. I find that the document also imposed various restrictions and delegated responsibilities to the tenant, which would not be sanctioned by the Act in a tenancy. For example Article 4.03 in the document states, “*(BC) shall pay the cost of bringing electricity, water, sewer, telecommunications and all other services to each log house erected by him*”.

I find that, although the agreement indicated that, as of March 2009, the monthly rent was to be \$3,500.00, the purported Ten-Day Notice issued by the landlord on September 21, 2009, only six months later, contained a payment demand for \$66,500.00 being alleged to be rental arrears. Other documents in evidence included a ledger showing payments and mortgage proceeds between the tenant and another party in relation to the subject property. In addition, a copy of a cheque from the tenant in the amount of \$100,000.00 showing the written

notation "*as offer to purchase (Address)*", was also submitted into evidence. Given the above, I find that the evidence indicates that payments were being made towards an interest other than mere rental of the subject premises. I find that this contract would not qualify as a tenancy agreement as defined and governed by the Act because the respondent did have an ownership interest.

I further note that, according to the tenant's testimony, issues related to this dispute are before the Supreme Court or have been decided by the Court.

Based on all of the testimony and evidence, I find that I have no authority under the Residential Tenancy Act to consider this dispute, nor to render a decision on the tenant's application and I must therefore decline jurisdiction.

Conclusion

Based on the determination that this tenancy relationship is not one that falls within the jurisdiction of the Act, I hereby decline to hear nor consider the tenant's application.

November 2009

Date of Decision

Dispute Resolution Officer