

## **DECISION**

### **Dispute Codes**

OPR MNR FF  
CNR MNDC AS O

### **Introduction**

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Occupant.

The Landlord filed seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenant for this application.

The Occupant filed seeking an Order to cancel the notice to end tenancy for unpaid rent, a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, an Order to allow the Occupant to assign or sublet the rental property, and other requests.

The parties confirmed receipt of the notices of dispute resolution packages and evidence filed by each applicant.

The Landlord, the Landlord's Counsel, and the Occupant appeared, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### **Issue(s) to be Decided**

Is the Landlord entitled to an Order of Possession for unpaid rent under section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order for unpaid rent under section 67 of the *Residential Tenancy Act*?

Is the Occupant entitled to an Order to cancel the notice to end tenancy for unpaid rent under section 46 of the *Residential Tenancy Act*?

Is the Occupant entitled to a Monetary Order for money owed for damage or loss under the Act, Regulation, or tenancy agreement under section 67 of the *Residential Tenancy Act*?

Is the Occupant entitled to an Order to allow the Occupant to sublet the rental unit under section 65 of the *Residential Tenancy Act*?

### Background and Evidence

At the onset of the hearing the Occupant confirmed that she had initially applied for a monetary amount of \$95,332.00 and was instructed to reduce the amount to \$25,000.00 to fall within the jurisdiction of the Residential Tenancy Branch. The Occupant advised that if by amending her application she is restricting her opportunity to claim the difference between her original claim and the amended amount then she wished to withdraw her amended application. The Occupant confirmed that she is withdrawing her application and will be making her claim through Supreme Court for the full amount of \$95,332.00.

The parties were advised that for the remainder of this hearing I would hear testimony pertaining to jurisdiction and we would reconvene at a later date to hear testimony regarding the Landlord's application, if I accepted jurisdiction under the *Residential Tenancy Act*.

The Occupant testified that she noticed the rental property advertised in early September 2006 and contacted the Landlord at which time she began negotiations to rent and purchase the rental property. The parties entered into a written agreement on September 19, 2006 which included a three month first right of refusal for the Occupant to purchase the property. The Occupant confirmed that from the onset of their first meeting she discussed purchasing the property from the Landlord.

The Occupant advised that she entered into a separate agreement with the Landlord in early October 2006 whereby the Landlord would contract the Occupant's services to renovate, paint, complete landscaping around the property, write legal agreements for the Landlord, and the Landlord would sell the property to the Occupant for 1.8 million dollars within two years. Shortly afterwards the parties entered into a "work/trade" agreement whereby the Occupant would occupy the property in exchange for her contracted services working towards purchasing the property. The Occupant stated that she began renovations prior to occupying the main house on November 1, 2006.

The Landlord testified and confirmed that at the onset he discussed selling the property to the Occupant after which they entered into several different agreements, the first being signed on September 19, 2006. The Landlord confirmed that he had contracted the Occupant's services and had additional agreements for the sale of the property with

the Occupant; however the Landlord disputed the purchase price which was stated by the Occupant today. The Landlord argued that he never agreed upon a selling price because the property has since been reassessed. The Landlord claimed that the first written agreement was simply a rental agreement.

The Occupant advised that over the course of her occupancy she had over eight agreements or contracts with the Landlord, she had a romantic liaison with the Landlord, and entered into a joint venture with the Landlord to create time shares on the property.

The Landlord's Counsel (Counsel) maintained that the party's relationship continued as a Landlord and Tenant relationship despite the business affairs of the parties. Counsel requested that I focus on the Landlord's request for an Order of Possession for unpaid rent and let the parties deal with their financial issues in another forum.

The Occupant stated that she would be proceeding with her application with the Supreme Court and argued that she paid the Landlord \$20,900.00 in August of 2009 to settle a previous eviction notice and this payment was to be considered towards her purchase of the property.

Counsel argued the \$20,900.00 was paid towards previous unpaid rent and was not related to the purchase of the property.

The Landlord argued that he had entered into many purchase / sale agreements with the occupant but when it came time to close the sale the Occupant did not have the money.

### Analysis

#### **Occupant's Claim**

The Occupant has withdrawn her application and advised that she will be seeking a remedy through the Supreme Court.

#### **Landlord's Claim**

After careful consideration of the testimony and documentary evidence I find the evidence supports that the Landlord and Occupant began negotiations for the purchase and sale of the subject property from the onset of their meeting and later entered into several written agreements for the purchase/sale of the property. I note that the first

written agreement, signed September 19, 2006, states that the Landlord provides the tenant “assurance” of a 3 month window with a first right of refusal for the tenant to purchase the property.

When determining jurisdiction I must consider that a Tenancy agreement is an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. A tenancy agreement does not include terms relating to the transfer of ownership, sale or purchase of the property.

Having found that the parties have negotiated a transfer of ownership of the subject property from the onset of their meeting; that they have entered into several written agreements to transfer the interest of the property since September 19, 2006; and the Occupant is seeking remedy through the Supreme Court for her monetary claims relating to this property, I decline to hear this matter for want of jurisdiction.

### Conclusion

I HEREBY DISMISS these applications, for want of jurisdiction. The Applicants are advised to seek out and make application with the appropriate court.

I decline to award recovery of the filing fee to either party, as the applications have been dismissed.

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: March 16, 2010.

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Dispute Resolution Officer