



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes O, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a determination if the tenancy is a fixed term or periodic tenancy and ownership of fixtures on the land.

The hearing was conducted via teleconference and was attended by the landlord's agent and both tenants.

During the hearing the landlord confirmed that they would not be pursuing the ownership of the fixtures during this dispute. I accept the landlord's amendment to exclude this matter from this application.

During the hearing the tenants indicated that they had an additional letter that they had intended to submit into evidence. With no objection from the landlord, I requested the tenants submit the letter by fax upon completion of the hearing. The landlord indicated he already had a copy of the letter and did not require the tenants to provide him a copy. The tenants submitted the copy this date.

In regard to jurisdiction on this matter, both parties agreed that the Option and Agreement to Purchase was no longer valid, that there were no longer matters related to the purchase of the property currently underway and the only relationship the parties currently have is a tenancy relationship. As a result, I accept jurisdiction on the matters outlined in this application.

Issues(s) to be Decided

The issues to be decided are whether the tenancy is a fixed term tenancy with the term ending on April 1, 2013 or a month to month tenancy and if the landlord is entitled to a monetary order to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 1, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord has submitted the following documents into evidence:

- A copy of a document entitled “Option and Agreement to Purchase” signed by the parties on November 15, 2006 outlining a purchase of a parcel of the landlord’s property that included the rental unit. The option was open for the tenants to exercise at any time within 90 days after subdivision approval. The agreement included, in clause 7.08 the agreed upon terms relating to the purchaser continuing to occupy the residential portion of the property;
- A copy of a letter from the landlord’s legal counsel to the tenants’ legal counsel dated May 26, 2008 indicating the landlord was unable to obtain subdivision approval and offering that the tenants may continue to rent the house on a month to month basis; and
- A copy of a letter from the landlord to the tenants dated May 12, 2010 offering for the tenants to purchase the residential property through a 30 day exclusion under the landlord’s realtor. In this letter the landlord asserts the tenants have a month to month tenancy with a fixed rent amount for 5 years.

The tenants have submitted into evidence the following documents:

- A copy of the above noted document entitled “Option and Agreement to Purchase”;
- A copy of a letter from the tenants’ legal counsel to the landlord’s legal counsel dated May 30, 2008 stating the purchasers’ option is still open as the landlord has not completed the subdivision approval. The letter also refers the landlord to clause 7.08 of the Option and Agreement to Purchase stating “with respect to rental arrangements which carries over for five years”;
- A copy of a letter dated September 23, 2010 from the female tenant indicating her understanding that they had a five year rental agreement from April 1, 2008 to April 1, 2013 paying month to month with post dated cheques. She has included copies of negotiated cheques for rental payments from April 1 of 2008, 2009, and 2010. On the cheque from 2009 the tenant has indicated second year; on the cheque from 2010 the tenant has indicated 1st payment of year 3 of rental agreement;
- A copy of a letter dated September 23, 2010 from the male tenant outlining his understanding of the rental agreement and events that lead to the signing of the Option and Agreement to Purchase; and

- A copy of a letter from the tenant's legal counsel dated October 8, 2010 asserting that "when the agreement to lease the subject property was entered into in the first place, the intent was to secure rental of the property for a period of years ending in 2013".

The relevant and specific clause in the Option and Agreement to Purchase (7.08) the parties have attributed to define the tenancy agreement reads as follows:

"The purchaser shall be entitled to occupy the existing residential premises and barn area on Lot B rent-free until March 31, 2008 or until the Subdivision approval, whichever shall first occur. "Subdivision approval shall be as defined in subsection 3.01 of this Agreement. Upon Subdivision approval, or commencing April 1, 2008 whichever shall first occur, the Purchaser may at the Purchaser's option remain a tenant of the residential premises located on Lot B on a month to month basis and will pay the Vendor rent of \$900.00 per month for rental of the residential premises (including the barn), inclusive of property taxes and \$200.00 per month for rental of the shop area located on the Lands, inclusive of property taxes for the first 5 years commencing April 1, 2008, with such rental to be adjusted starting at April 1, 2013 and each year thereafter to the fair market rental."

The landlord contends that the tenancy is a month to month tenancy with an agreed upon rental amount for five years (from April 1, 2008 until April 1, 2013). The tenants contend that the tenancy is a five year fixed term tenancy from April 1, 2008 to April 1, 2013.

The tenants assert their primary objective in the initial negotiations was to be certain that they would have a long term tenancy to ensure that they would not have to move at least until after their daughter had finished school. They further state that their intention to stay long term is clear through the improvements they have made to the residential property over the years.

The parties testified that through other correspondence and meetings between the parties an additional offer for the tenants to purchase the property was extended once the property was registered in January of 2010, the tenants chose not to take that option.

Analysis

As the clause relied upon by the parties to define the tenancy comes from the original Option and Agreement to Purchase document, I find it is necessary to interpret its meaning in the context of that agreement.

As the clause refers specifically to the purchasers it is clear that this arrangement is intended until such time as the agreement is actualized or as it turns out in this case when it was frustrated by the inability of the landlord to obtain subdivision approval.

Based on the submissions of the parties, I find the intent of this clause was to be an opportunity for the purchasers, who had already resided on the property since 1997, to remaining living on the property until such time as the purchase was completed. I also find that once the agreement was frustrated the vendor had no further obligations to the purchaser for them to remain.

Having said this, neither party has disputed that a tenancy exists. A tenancy is defined under the *Act* as a tenant's right to possession of a rental unit under a tenancy agreement. Clearly the tenant's have possession of the rental unit and have been paying rent in consideration for this possession.

In the case of verbal agreements, I find that where verbal terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

However this case is not completely a verbal agreement as there is at least a starting point for a third party to assist in that interpretation. That is that both parties agree that the wording in Clause 7.08 of the Option and Agreement to Purchase is the basis for the tenancy agreement.

A fixed term tenancy is defined under the *Act* as a tenancy under a tenancy agreement that specifies the date on which the tenancy ends. A periodic tenancy is defined as a tenancy on a weekly, monthly or other periodic basis under a tenancy agreement that continues until it is ended in accordance with the *Act*.

The wording in clause 7.08 stipulates that the Purchaser may "remain a tenant....on a month to month basis and will pay the Vendor rent of \$900.00 per month.....for the first

five years commencing April 1, 2008, with such rental to be adjusted starting at April 1, 2013 an each year thereafter to the fair market rental.”

I find that in this wording there is no indication of a date that the tenancy ends, rather there is a date that the landlord will adjust the rent amount which starts 5 years after the first rent payment was due and would occur each year after that.

Conclusion

As I have found there is no date given that the tenancy ends, I conclude the tenancy is not for a fixed term but rather a periodic tenancy with the period being define as a month.

As the landlord has been successful in their application I find that the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$50.00** comprised of the fee paid by the landlord for this application.

This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: October 22, 2010.

Dispute Resolution Officer