



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, OLC, LRE, LAT, FF, OPC, MNR

Introduction

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

The Tenants seek:

- an Order to Cancel a Notice to End Tenancy for Cause,
- an Order for the Landlord to comply with the tenancy agreement;
- an Order suspending or setting conditions on the Landlord's right to enter the rental unit, an Order authorizing the Tenant to change locks on the rental unit, and
- recovery of the filing fee.

The Landlord seeks:

- an Order of Possession for cause;
- a Monetary Order for unpaid rent; and
- recovery of the filing fee.

The Parties agreed that there is no issue in relation to the service of documents and both the Tenants and the Landlord attended the hearing and were given opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Whether the dispute brought forward by the Parties may be resolved within the jurisdiction of the Act.

Background and Evidence

The Tenancy started on October 1, 2010. An addendum to the tenancy agreement, signed by the landlord, included relevant clauses set out as follows:

- Should you choose to purchase the property within the first three months' of the tenancy agreement, I will apply 100% of the total rent charged towards the purchase price of the property.
- Should you choose to purchase the property within the first six months' of the tenancy agreement, I will apply 50% of the total rent charged towards the purchase price of the property.
- Should an offer come in on the property while you are tenants, you will be notified and have the opportunity to submit a competing offer. The time to submit an offer will be limited by the time frame allotted for in the competing offer.

On February 8, 2011, the Landlord received an offer to purchase from a third party. On February 9, 2010, the Landlord accepted that offer. The Tenants state that they did not receive notice from the Landlord of the offer and were not provided an opportunity to make an offer to purchase. The Tenants refused to allow the Landlord to carry out a property inspection in relation to the sale of the property. The Landlord served the Tenants with a one month Notice to End the Tenancy for Cause, for the following reason: "the Tenant engaged in illegal activity that has, or is likely to: jeopardize a lawful right or interest of the landlord." The landlord suggests that the refusal of the tenants to allow the property inspection necessary for the completion of the sale of the unit is an act that jeopardizes the sale of the unit. The Tenants state that the Landlord has breached the terms of the agreement in relation to their right to make an offer to purchase the unit and they are protecting their rights by disallowing the inspection.

Analysis

Where a tenancy agreement includes a right to purchase and, if rental payments form part of the purchase price, then a tenancy agreement has not been entered into as defined by Section 1 of the Act.

In this case, the tenancy agreement includes the opportunity for the Tenants to make an offer to purchase the property and the application of all or a portion of the Tenants' rent towards the purchase price. The option to purchase the property with the application of a portion of the rent towards the purchase price is in effect for six months after the tenancy agreement started, or March 31, 2011. Given these facts, I find that the Landlord and Tenant intended that at least the first six months of their arrangement to be governed by terms that take the tenancy outside the jurisdiction of the Act.

I find that the dispute between the Tenant and Landlord involves an agreement that is not within the jurisdiction of the Act and accordingly, dismiss the applications from the Tenants and the Landlord.

Conclusion

The dispute between the parties is outside the jurisdiction of the Act and the applications from the Tenants and Landlord are 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 21, 2011.

Residential Tenancy Branch