



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, OPB, MNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

Background and Evidence

In a previous dispute resolution proceeding between these parties heard on March 21, 2011, the Tenant applied (among other things) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated March 4, 2011. In her decision issued on March 22, 2011, the Dispute Resolution Officer found that the Parties' dispute did not fall under the Residential Tenancy Act because the Parties had entered into an Agreement of Purchase and Sale dated August 31, 2010 and a deposit had been paid by the Purchaser/Tenant which formed part of the purchase price. As a result, the Tenant's application was dismissed without leave to reapply.

The Landlord has now applied to enforce a 10 Day Notice to End Tenancy for Unpaid Rent dated March 10, 2011 as he claims that on February 11, 2011, the Tenant/Buyer signed an agreement whereby she agreed that the deposit would be returned to her, that the Agreement for Purchase and Sale dated August 31, 2010 was null and void and she discharged the seller from any claim in connection with the property. Consequently, the Landlord argued there is now only a Residential Tenancy Agreement in place between the Parties. The Landlord claimed that the Dispute Resolution Officer did not take oral evidence on this matter but instead relied on the Parties' documentary evidence when she issued her decision on March 22, 2011.

The Tenant admitted that at the time of the previous hearing the deposit had already been returned to her and that she had agreed in writing that the agreement of purchase and sale dated August 31, 2010 was at an end. The Tenant admitted that withheld rent for March and April 2011 however she argued that she did so because there were

deficiencies with the property it was and is her intention to force the seller/Landlord to enter into a new agreement of purchase and sale.

Analysis

A decision was issued on March 22, 2011 in which the dispute resolution officer held that there was no jurisdiction under the Act to deal with disputes *from either of the Parties* regarding the property. At this hearing, both of both Parties said they believed that the information concerning the release of the deposit and the ending of the Agreement of Purchase and Sale on February 11, 2011 was before the Dispute Resolution Officer when she issued her decision on March 22, 2011. Consequently, I cannot now come to a different decision *on the same information* that I do have jurisdiction to hear the Landlord's application.

If the Landlord disputes the finding made in the Decision dated March 22, 2011 about jurisdiction and believes that the Dispute Resolution Officer found that the Tenant had an interest in the property *solely* because she mistakenly believed that a deposit and an Agreement for Purchase and Sale were still in place, then the Landlord must apply for a Correction and Clarification of that Decision.

Alternatively, if the Landlord does not dispute the previous Decision about jurisdiction, then the Landlord must bring his application for an Order of Possession and for a Monetary Order for unpaid rent in the Supreme Court of British Columbia.

Conclusion

The Landlord's application is 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: April 12, 2011.

Residential Tenancy Branch