



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. All parties were represented in the conference call hearing.

Issue to be Decided

Is this tenancy within the jurisdiction of the *Residential Tenancy Act* (the “Act”)?

Background and Evidence

The landlord testified that she entered into a rent to own agreement with the tenants, part of the terms under which the tenants would pay arrears on a mortgage and assume responsibility for paying the first and second mortgage on the subject property. The landlord testified that the payment of mortgage arrears was to form part of the purchase price of the property. She stated that the parties had also agreed that the tenants would perform repairs or improvements to the property and that they would recover the monies spent when the property was sold. The landlord alleged that the tenants have stopped making mortgage payments and seeks to end their tenancy.

The tenants argued that this issue is outside the jurisdiction of the Act as the tenants hold a beneficial interest in the subject property.

The landlord argued that the contract of purchase and sale was not completed and provided evidence showing that she is shown as the owner in fee simple on title.

Analysis

The Act applies to tenancies in which tenants hold only an occupational right to the property. While it is clear that the tenants at this point do not have their interest registered on title, because they have paid the mortgage arrears which have been

applied to the purchase price of the property, I find it more likely than not that they have a beneficial interest in the property.

I find that the tenants' interest in the property exceeds a simple occupational interest and I find that I have no jurisdiction over this tenancy.

Conclusion

I decline jurisdiction.

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 21, 2011

Residential Tenancy Branch