



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, 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.

The Landlord's agent said the Tenant was served on December 8, 2011 with the Application and Notice of Hearing (the "hearing package") by registered mail. Section 90(a) of the Act says that a document delivered by mail is deemed to be received 5 days later. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Is there jurisdiction to hear this dispute?
2. Does the Landlord have grounds to end the tenancy?
3. Are there rent arrears and if so, how much?

Background and Evidence

The Landlord's agent said the Respondent moved into the rental unit on July 11, 2011. The Landlord's agent claimed the Parties had a rent-to-own arrangement whereby the Respondent agreed to make monthly payments (of an indeterminate amount) a portion of which (\$1,800.00) would be applied to rent and a portion of which would be attributed to a deposit (to be applied to the purchase price). The Landlord's agent said the agreement of purchase and sale was to complete on November 1, 2011 however, the deal fell through at the end of October, 2011 or at the beginning of November 2011 and at that time, the Respondent agreed to pay rent only at a rate of \$1,800.00 per month.

The Landlord's agent claimed that the Respondent only made one payment of \$3,000.00 on August 11, 2011 which the Landlord applied to rent for July and August 2011. Consequently, the Landlord's agent said on October 28, 2011, he served the Respondent with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 28, 2011 (for September and October unpaid rent) by posting it to the rental

unit door. The Landlord's agent said the Respondent has not made any further rent payments and now has rent arrears for November and December 2011.

Analysis

Section 2 of the Act says "the Act applies to tenancy agreements, rental units and other residential property." RTB Policy Guideline #27 (Jurisdiction) says at p. 4 as follows:

"If the relationship between the parties is that of seller and purchaser of real estate, the Legislation would not apply as the parties have not entered into a "tenancy agreement" as defined by s. 1 of the Act....If the monies that are changing hands are part of the purchase price, a tenancy agreement has not been entered into."

The Landlord's agent argued that there was a tenancy because no written agreement for purchase and sale had been entered into and the Respondent did not pay a deposit. However, I find that there is insufficient evidence to draw this conclusion. I find on a balance of probabilities the Parties entered into a rent-to-own agreement however, I am not convinced that there was no written agreement of this as alleged by the Landlord. Although the Landlord claimed that the Tenant made only one payment of \$3,000.00 on August 11, 2011 which was applied to rent, I am also not convinced that this payment was supposed to be applied to rent as opposed to a deposit.

the Landlord's agent gave contradictory evidence regarding these matters at the hearing. For example, at one point in the hearing, he claimed that the Tenant made a *number of payments* of different amounts toward the deposit but then changed his evidence and claimed that the Tenant only spoke of making these payments. The Landlord's agent also claimed that the rent-to-own agreement was to run for a period of 6 months to a year, until the Tenant could raise enough money for the deposit. However, the Landlord's agent then claimed that the rent-to-own agreement terminated when the deal failed to complete on November 1, 2011 as agreed.

In summary, I find that there was a rent-to-own agreement between the Parties however it is not clear whether that agreement terminated on November 1, 2011 as alleged by the Landlord or is supposed to continue for a further period as suggested by the Landlord's agent. Furthermore, I find that there is insufficient evidence as to whether the amount(s) paid by the Tenant was/were to be applied to the purchase price or to rent. Consequently, I find that the Landlord has not met the burden of showing that this matter falls under s. 2 of the Act and conclude instead that this matter more closely approximates that of a seller and purchase of real estate.

Conclusion

Consequently, the Landlord's application is dismissed without leave to reapply due to a lack of 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: January 03, 2012.

Residential Tenancy Branch