



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR and FF

Introduction

This hearing was convened on the landlord's application seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenant's door on February 5, 2012. The landlord also sought a Monetary Order for unpaid rent and recovery of costs.

Despite having been served with the Notice of Hearing and the landlord's evidence sent by registered mail, courier and personal service, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

As a preliminary matter, I noted that the landlord's evidence had included both a Residential Tenancy Agreement and an Option Agreement, both signed on September 6, 2011. The Residential Tenancy Agreement is for a fixed term beginning September 11, 2011 and ending on March 31, 2012 at a monthly rent of \$10,000. The rental unit includes a 6,500 square foot house and a 1,200 square foot carriage house on one-third of an acre.

Both the rental agreement and the option to purchase documents make reference to each other.

Given that the option agreement appears to create an interest in real property which would place this dispute in the exclusive domain of the Supreme Court of British Columbia, I advised the landlord and legal counsel that I believed this matter was beyond my jurisdiction.

Legal counsel submitted that the two agreements stand independently of one another and that she believed I could assume jurisdiction over the residential tenancy component.

She further submitted that an early decision was essential due to the continuing loss to the landlord as a result of the tenant having abandoned the rental unit.

Analysis

I find that:

1. The two agreements are inextricably linked. The option agreement provides that \$5,000 of the \$10,000 rent paid for each month of the tenancy will be applied to the purchase price of the rental property.
2. The option agreement, for which option the tenant paid \$50,000, forfeit on the tenant's default, is the predominant agreement and the rental agreement is subordinate and was drawn to accommodate the option agreement.
3. Any order that I might make has the potential to interfere with the superior jurisdiction of the Supreme Court of British Columbia.

Therefore, I must decline jurisdiction on this application unless directed otherwise by the Court.

Conclusion

The application is dismissed as *ultra vires*.

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 14, 2012.

Residential Tenancy Branch