



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Does the Residential Tenancy Act apply to this dispute?

If so, is the tenant entitled to an order cancelling the Notice and to recover the filing fee?

Background and Evidence

Before considering the merits of these applications I must determine whether there is jurisdiction under the *Residential Tenancy Act*.

Applicant/tenant's testimony-

The applicant rented the property in question from the respondents (landlords/owners) for approximately a year, beginning September 1, 2009, at which time the parties entered into a rent to own agreement beginning October 2010.

Although mention was made that there was a written tenancy agreement for the first year, the document was not entered into evidence.

The rent to own agreement, according to the applicant, was verbal. The applicant agreed that as long as there remained an intent to purchase, she would be responsible for the mortgage payments, property tax, and strata fees which the respondents would accumulate into the equity of the home. When the mortgage came due in 2013, the title would be transferred into the applicant's name.

The tenant's payments were in the same amount as the respondent's mortgage payments, \$1738.10, and were paid monthly to the respondents until the applicant began asking questions about the financial information with the mortgage holder.

When the tenant did not receive the information, she informed the male respondent she was no longer interested in purchasing the property and stopped making payments.

When questioned, the tenant agreed that her correspondence with the male respondent made reference to the monthly payments as being mortgage payments.

Respondent/landlords' testimony-

The respondent acknowledged that he does not believe the Act applies to this dispute, but that the Notice was issued as he believed he had no other recourse as the applicant was staying in the home for free when she stopped making the payments.

The male respondent had his lawyer prepare a purchase agreement, but the applicant never signed the document. This document was entered into evidence.

The applicant had extensive renovations done to the home, showing the applicant's ownership intent.

Analysis

Based on the above, all of the testimony and evidence, and on a balance of probabilities, I find that I have no jurisdiction under the Act in this dispute and I dismiss the Application, for the following reasons.

The Residential Tenancy Act provides that the Act applies to tenancy agreements, rental units and other residential property. The definition of tenancy agreement in the Residential Tenancy Act provides that the Act applies to a license to occupy.

The legislation does not confer authority to consider disputes between all types of relationships between parties. Only relationships between landlords and tenants can be determined under the *Act*.

I find that the parties had an agreement, memorialized in an unsigned document, that transferred an interest in the land which goes beyond the relationship of a landlord and tenant which is beyond the scope of the *Residential Tenancy Act*. At the very least, I find the applicant has an interest in the property different than the right of possession a tenant would acquire in a tenancy.

Conclusion

I find that the relationship between the parties is not within the jurisdiction of the *Residential Tenancy Act* and therefore have declined to consider the merits of the application. I also find that the respondent cannot bring forward a notice to end tenancy under this *Act*.

The parties will need to seek resolution of this dispute through another legal venue.

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: August 20, 2012.

Residential Tenancy Branch