



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR, MNR, CNR, FF

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The tenant applied to cancel the notice to end tenancy and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to an order of possession and to a monetary order for unpaid rent and the filing fee? Is the tenant to the filing fee?

### **Background and Evidence**

On March 05, 2009, the landlord and tenant entered into a tenancy agreement with an option to purchase the rental unit. The tenant put down a deposit of \$5,000.00 which would be applied to the purchase price, when the tenant exercised the option. \$300.00 of the monthly rent would also be applied to the purchase price. The tenants had 24 months to exercise the option.

At the end of the 24 months, the tenants were given an extension of time. The tenant stated that this correspondence was by email and the landlord did not dispute this. The latest extension was given to the tenant in August 2012.

### **Analysis**

*Residential Tenancy Policy Guideline 27* addresses jurisdictional matters. This guideline states that 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 in section 1 of the Acts. It does not matter if the parties have called the agreement, a tenancy agreement. If the monies that are changing hands are part of the purchase price, a tenancy agreement has not been entered into.

In the case of a tenancy agreement with an option to purchase, the issue of jurisdiction will turn on the construction of the agreement. If the agreement meets the test outlined above, then the Acts may not apply. However, if the parties intended a tenancy to exist prior to the exercise of the right to purchase, and the right was not exercised, and the monies which were paid were not paid towards the purchase price, then the Acts may apply and the RTB may assume jurisdiction.

In this case, the tenant paid a deposit and a portion of rent that was credited towards the purchase price of the property. In addition, the landlord allowed the tenant more time to exercise the option and therefore at this time, the *Residential Tenancy Act* does not apply and accordingly I decline to proceed due to a lack of jurisdiction.

### **Conclusion**

The applications of both parties are dismissed. The parties must bear the cost of filing their own application.

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: September 13, 2012.

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Residential Tenancy Branch