



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, FF

### Introduction

This hearing was convened in response to an application filed by the tenants seeking to cancel a Notice to End Tenancy given for unpaid rent and seeking to recover the filing fee paid for this application.

Both parties appeared at the hearing and gave evidence under oath.

### Issue(s) to be Decided

Are the tenants “tenants” as defined by the Act and have they paid the rent?

### Background and Evidence

This tenancy began in April 2009. The parties agree that for the first 12 months of the tenancy the tenants were to pay no rent. Instead they were going to perform renovations to the property in lieu of rent. The landlord was to pay for all materials. At the end of the 12 month period the tenants began paying rent of \$1,000.00 per month. The landlord says the tenants did pay \$1,000.00 per month for about a year then they stopped paying rent. The landlord therefore served them with a 10 day Notice to End Tenancy. The landlord says the tenants also filed a claim in the Supreme Court of British Columbia stating that they had an ownership interest in the land.

The landlord submits that in July 2011 he did enter into a Contract of Purchase and Sale with the tenants with respect to the property. The purchase price was to be \$305,000.00 and the possession date was fixed at August 15, 2011. The contract was conditional upon the tenants arranging a mortgage. On this point the landlord pointed to clause 6 which states:

This offer is conditional for 20 days for the purchasers arranging a mortgage of 75% of the purchase price the vendor will take back a mortgage in the amount of \$12,000.00.

The landlord says the tenants were never able to obtain the mortgage so the contract of purchase and sale was never finalized and the tenancy continued.

The tenants did not appear at the hearing but submitted a sworn Affidavit and were represented by their legal counsel.

In their submissions the male tenant says he has been a subcontractor for 25 years and friends with the landlord for over 30 years. The male tenant says that in September of 2009 the landlord offered him a position in the landlord's "...home renovation..." business and offered to help them purchase a home.

In November 2009 the tenants moved from Calgary to Vancouver Island and the landlords took them to see the rental property. The tenants say the house was in very poor condition but they decided to move into the house anyway and to renovate it so as to "...make it habitable". The tenants say there was a bare plywood floor, no running water and the wiring in the home was set up for a grow operation and very unsafe.

The tenants say they never discussed renting the house and they never signed a tenancy agreement. The tenants say they "...used up all our savings, Janine's employment insurance benefits, and maxed out our credit cards to buy renovation materials..." The tenants say they did not pay rent because they paid for all of the supplies and supplied the labour for the renovations. The tenants say they did this because the landlord told them they would be buying the house eventually. The tenants say that while living there and performing the renovations they gave the landlord money towards the purchase price providing different amounts of cash each month ranging from \$1,000.00 to \$3,000.00.

The tenants agree that they entered into the Contract of Purchase and Sale in July 2011 but that they were unable to obtain the mortgage as set out in that contract. However, the tenants say that they then entered into a verbal agreement to pay \$1,000.00 a month toward the purchase price and this is why they noted on their payment cheques "...rent to own..." The tenant submitted copies of cheques dated June 1, 2011, July 1, 2011, August 1, 2011 and September 1, 2011 showing the notation "...rent to own..."

The tenants go on to state that the well ran dry many times and it cost them a lot of money to have water brought in. Further that BC Hydro removed their meter in April 2012 because it was "...deemed unsafe..." at which point the tenants lost all of their food and had to use a generator for power. Further the tenants say they built an addition to expand the laundry room and rewire the hydro meter for which they paid an electrical

contractor \$2,194.16. The tenants say they invested about \$60,000.00 and "...our considerable labour..." into upgrading the property. With respect to their expenditures the tenants submitted a variety of invoices from Farm Feed Supply, T-Wall Construction and JR Electric.

On June 5, 2012 the tenant says he wrote to the landlord offering him \$243,000.00 for the property and the landlord counter-offered at \$280,000.00. On June 27, 2012 the tenants say they filed a Notice of Civil Claim in the BC Supreme Court and a certificate of pending litigation was registered against the property.

The landlord disagrees with the tenants and says there was never a verbal agreement for a rent-to-own arrangement, there was only the contract of purchase and sale and this was never fulfilled. The landlord maintains that the tenants were tenants and their rent of \$1,000.00 was rent and it is in arrears and the landlord wishes to end this tenancy and receive an Order of Possession. The landlord says that in lieu of the work the tenants did in the property they lived rent-free for the first year. The landlord says that the reason BC Hydro came to remove the meter was because the rental unit was a suspected grow operation.

The tenants maintain that the rental unit is not a grow operation and the meter was removed because it had been a grow operation before they occupied the home.

### Analysis

The parties agree that the tenants were allowed to live in the rental unit for the first year without paying any sum for rent in lieu of the tenants performing renovations. While there is some dispute with respect to who paid for supplies for the renovations, this is not the issue for me to decide. The issue is whether this is as tenancy within the meaning of the *Residential Tenancy Act* and, if so, whether these tenants have paid their rent.

I find that this is a residential tenancy. I based this finding on the evidence of both parties that this tenancy began initially with no rent payable in lieu of renovations following which the tenants began to pay \$1,000.00 per month in rent.

It is true that the landlord and the tenants did enter into a Contract of Purchase and Sale to purchase the rental property but the tenants did not obtain mortgage funding within the 20 day time period required in the contract therefore the contract was never fulfilled and the occupancy of the rental unit carried on as a tenancy. Simply because the tenant wrote "rent to own" on some of her rental payment cheques does not prove that it

was, in fact, a rent-to- own situation. While the tenants say it was a verbal arrangement I do not find that there is sufficient evidence to support this finding. I make this finding because the parties did initially make a written Contract of Purchase and Sale so I find that it is reasonable to assume that if they entered into a rent-to-own situation that they would have written another contract. Overall I find it difficult to believe that for so serious a matter they would rely simply on a verbal agreement. On a balance of probabilities I find that it is more likely than not that a written agreement was not prepared because there was no agreement at all and this was simply a month-to-month tenancy.

While the tenants point to evidence of having spent large sums on the rental property as proof that they expected the property to become their own, the landlord disagrees with this. On this point the tenants did submit invoices into evidence but the invoices lack details such as the nature of the work performed, where the work was performed or details of the types of supplies purchased. The male tenant testified that he is in the business of home renovation and without specific details it may be that these supplies could have been purchased for a variety of reasons other than to perform renovations to the rental unit. One invoice is from Farm Feed Supply and offers no explanation as to how this might relate to renovations to the rental property. Overall I find that the tenants have failed to show that they invested considerable sums in the property.

In the end I find that this is a residential tenancy and that the rental unit is one which the tenants had an opportunity to purchase however as the tenants were unable to fulfill the requirements of the contract of purchase and sale the option to purchase was never exercised and this tenancy remained a tenancy.

Having found that this is a residential tenancy I must now determine whether the landlord has cause to end this tenancy due to unpaid rent. The evidence is that the tenants did not pay their rent and the landlord issued a 10 day Notice to End Tenancy. After having been served with the Notice the tenants did not pay the rent due as set out on the Notice within the 5 days allowed under the Act also as set out in the Notice. I therefore dismiss the tenants' application seeking to cancel that Notice.

The landlord has requested an Order of Possession. The *Residential Tenancy Act* provides that when an application to cancel a notice is dismissed and a landlord requests an Order of Possession the Order must be issued.

As the tenants have been unsuccessful in their application their application to recover the filing fee paid for this application is also dismissed.

**Conclusion**

The landlord is provided with a formal copy of an order of possession. This is a final and binding Order enforceable as any Order of the Supreme Court of British Columbia.

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: October 25, 2012.

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Residential Tenancy Branch