



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF, O

Introduction

This matter dealt with an application by the Applicants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 16, 2012 and to recover the filing fee for this proceeding. The Applicants also allege in their application that the Residential Tenancy Branch lacks jurisdiction to hear this dispute because it involves the transfer of an ownership interest in the rental property.

Issue(s) to be Decided

1. Does the Residential Tenancy Branch have jurisdiction to hear this dispute?
2. If there is jurisdiction, do the Respondents have grounds to end the tenancy?

Background and Evidence

On September 8, 2011, the Parties entered into two separate Agreements for Purchase and Sale. The first agreement was for the purchase and sale of the Applicants' property by the Respondents (Agreement #1). The second agreement was for the purchase and sale of the Respondents' property (the rental property) by the Applicants (Agreement #2).

Under Agreement #2, the Applicants were not required to pay a deposit but were required to "*pay the Seller from (the) Possession date [September 16, 2011] to (the) completion date [August 1, 2013] a monthly rent of \$2,5000.00.*" The Parties agree that the rent payments would not be deducted from the purchase price but were in addition to it. The Landlords claim that the last rent payment of \$2,500.00 made by the Applicants was on May 1, 2012. As a result, the Respondents said on October 16, 2012 they served the Applicants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental property.

Under Agreement #1, the Respondents were required to pay an initial deposit of \$25,000.00 and monthly payments of \$2,500.00 which were to be deducted from the purchase price. The Parties agree that this property was rented by the Respondents to an assignee (or business partner) of the Respondents' who would then purchase the property by the completion date. A further term of Agreement #1 is that,

“if the Sellers do not complete on the [rental property] sale by (the) completion date, then this offer to purchase shall become null & void & any & all monies already paid to the Seller shall be reimbursed to the buyer.”

The Applicants argued that they are ready, willing and able to complete the purchase of the rental property but that the Respondents appear reluctant to do so. The Respondents argued that foreclosure proceedings have been started by a 2nd mortgagee of the property owned by the Applicants with the result that they are unlikely to be able to obtain financing to complete the sale of the rental property.

The Applicants also argued that the monthly payments required under both Agreements was supposed to be offsetting so that there should be no arrears owing. The Respondents argued that there was never an agreement that the monthly payments on the two properties would be set off and that in any event the 2nd mortgagee of the Property owned by the Applicants has exercised an assignment of the rents (which the Applicants denied).

The Respondents further argued that it would be a hardship to allow the Applicants to continue to reside in the property without paying rent because they have also encumbered the property by causing liens to be placed on the rental property as a result of having done some renovations to it. Consequently, the Respondents argued that the purchase price of that property may have to be renegotiated. The Applicants argued that the Respondents have not accounted for all rent payments paid by the Respondents' assignee/tenant on their property and that an accounting may have to be done to reduce the deposit amount.

Analysis

Section 2 of the Act says the Act applies to tenancy agreements, rental units and other residential property (which terms are defined under s. 1 of the Act). RTB Policy Guideline #27 (Jurisdiction) says at p. 2 that,

*“If moneys that are changing hands are part of the purchase price, a tenancy agreement has **not** been entered into.... If a tenant takes an interest in the land and buildings which is higher than the right to possession, such as part ownership of the premises, then a tenancy agreement may not have been entered into. If however, 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 Act may apply.”*

I find that under Agreement #1 that none of the rent moneys required to be paid by the Applicants to the Respondents forms part of the purchase price. However, I find that the Applicants may nevertheless have an ownership interest in the property because their right to purchase (or to tender the purchase price by the completion date) has not yet expired. I also find that although the Applicants have not paid a deposit toward the purchase of the property, they have incurred expenses to make improvements to it and may also have an interest in that regard.

I also find that there are a number of complicating factors that make this matter inappropriate for determination by the Residential Tenancy Branch. In particular, it is clear from the term of Agreement #1 set out above that if the Applicants do not complete the sale of the rental property the Respondents will be relieved of their obligation to complete Agreement #2. The Applicants claim that they are ready, willing and able to complete the purchase of the rental property earlier than the completion date but that the Respondents have not been cooperating which is denied by the Respondents. The Respondents claim that the Applicants have not demonstrated an ability to complete because a foreclosure action has been commenced on the Applicants' property. Both Parties contemplate that further accountings may have to be done to revise the purchase price and/or deposits of the properties.

Consequently, I find that although Agreement #2 purports on its face to provide for a residential tenancy prior to completion of the agreement for sale of the property, I also find that the Parties' dealings are much more involved than simply that. In other words, I find that Agreement #2 is not a good indicator of the Parties' entire business arrangements and that to intervene in this matter would likely significantly affect the outcome of those arrangements. For this reason, I find that there may be an ownership issue that must be resolved by the Supreme Court of British Columbia and accordingly I decline jurisdiction in this dispute.

Conclusion

The Applicants' application is dismissed without leave to reapply on the grounds that the Residential Tenancy Branch has declined jurisdiction in this matter.

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: November 27, 2012.

Residential Tenancy Branch