



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Unpaid Rent showing effective date of November 23, 2012.

Both the landlord and the tenant appeared at today's hearing and each gave testimony in turn.

Issue(s) to be Decided

- Should the Ten-Day Notice to End Tenancy for Unpaid Rent be cancelled?

The burden of proof is on the landlord/respondent to justify the Notice to End Tenancy.

Preliminary Matter

At the outset of the hearing, the parties testified that, after the Ten Day Notice was issued, the landlord made a written proposal with respect to optional terms for ending the tenancy with some form of compensation to the tenant. One of the choices in the proposal involved waiving the Ten Day Notice to End Tenancy for Unpaid Rent, contingent upon the parties reaching a mutual agreement to end the tenancy. The landlord's purchase of chattels belonging to the tenant was also featured as an option.

Section 62 of the Act gives the arbitrator authority to determine:

- (a) disputes in relation to which the director has accepted an application for dispute resolution, and
- (b) any matters related to that dispute that arise under the Act or a tenancy agreement.

The arbitrator may also make any finding of fact or law that is necessary or incidental to making a decision or an order under the Act. And may make any order necessary to give effect to the rights, obligations and prohibitions under the Act, including an order that a landlord or tenant comply with the Act, the regulations or a tenancy agreement.

Section 1 of the Act, defines "*tenancy agreement*" as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

In situations where a landlord and tenant enter into a subsequent agreement that may involve consideration that is outside of a tenancy agreement, I find that the Residential Tenancy Act may not apply. Even though some of the terms being negotiated are associated with the tenancy or former tenancy, I find that this particular contract cannot be considered as a valid part of a tenancy agreement. I find that the terms cannot be governed under the Act because the terms of the new agreement functions to place the parties beyond their reciprocal roles as landlord and tenant.

I find that, under the Act, I have no authority to make any determinations with respect to the complementary rights and responsibilities under a separate contractual agreement, other than a tenancy agreement.

For this reason, I find I must decline jurisdiction over the dispute between these two parties.

Conclusion

Jurisdiction over this dispute is declined on the basis that it relates to issues outside of a tenancy agreement.

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: December 18, 2012.

Residential Tenancy Branch