



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPB

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for an Order as follows:

1. An Order of Possession - Section 55.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions. The Landlord states that the Tenant did not serve the Landlord with the notice of hearing however the Landlord took the initiative to attend the Hearing. As the Landlord has appeared, I find that despite the Tenant’s failure the hearing may proceed as there is no prejudice to the Landlord in doing so.

Issue(s) to be Decided

Is there a tenancy agreement under the Act?

Background and Evidence

The Landlord agrees that the Parties entered in an agreement on August 23, 2008 between the Parties as a “seller” and “purchaser”. The agreement provides that the purchaser, the named Tenant in this application, has made a down payment and that a portion of an amount payable each month will be applied to the interest of the mortgage held by the seller and the “rent to own” of the land and building. The agreement also provides that lump sum payments will be applied against the principle with the final date for the payout being September 1, 2013. The Landlord states that the agreement is only an option to purchase agreement, that the Tenant did not make a down payment

and that the Tenant has lost the option to purchase the property. The Landlord agrees that the Tenant has paid the monthly amounts as set out in the agreement. The Tenant states that the Landlord only wants to end the relationship as the Tenant will have the principle paid in September 2013 as provided in the agreement.

Analysis

If the relationship between the parties is that of seller and purchaser of real estate, the Act would not apply as the parties have not entered into a "Tenancy Agreement" as defined in section 1 of the Act. It does not matter what the Parties call the agreement, if the monies that are changing hands are part of the purchase price, a tenancy agreement has not been entered into. Given that the agreement provides for a down payment and a portion of the monthly payments to be applied against the purchase price of both the land and building, I find that the relationship between the Parties is not governed by a tenancy agreement under the Act. As a result, I find that I do not have jurisdiction to consider the Landlord's application and the dispute over breaches of the agreement and I dismiss the application.

Conclusion

The Landlord's application is dismissed.

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: June 13, 2013

Residential Tenancy Branch

