



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute codes: FF MNR OPB OPR

Preliminary Issue- Jurisdiction

The proceedings before me today deal with the landlord's application seeking an Order of Possession and a Monetary Order based on a 10-Day Notice to End Tenancy for Unpaid Rent. The landlord submitted a copy of a contract signed by the landlord and the tenant.

Despite being served in person with the Application and Notice of Hearing on October 31, 2013, the tenant did not appear.

I find that, given the nature of the documentary evidence submitted in support of this application, the first determination that must be made before proceeding is whether or not this tenancy relationship is under the provisions of the Act.

The landlord acknowledged that the tenant had signed a rent-to-own agreement, but stated that the application only pertained to the tenant's failure to pay rent under the lease.. The landlord submitted into evidence a copy of the tenancy agreement signed by the parties on October 5, 2012. The document was titled "*Residential Lease with Option to Purchase*."

The document indicted that no security deposit was paid but that an amount of \$10,000.00 was paid as, ' "*initial Optional Money*", (Non refundable).'

The agreement contains terms of occupancy for the tenancy along with a purchase option of \$317,000.00 and other purchase provisions.

Analysis

A determination of whether or not the contract before me relates to a tenancy relationship that falls under the jurisdiction of the Act, is contingent upon the question of whether or not the contract contained a transfer of an ownership interest to the tenant.

The definition of tenancy agreement in section 1 states:

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

"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.

I find that a tenancy agreement is a transfer of an interest in land and buildings, or a license to occupy. The interest that is transferred to the renter, under section 1 of the Act, is only the *right to possession* of the residential premises and nothing more. If the tenant takes an interest in the land and buildings that exceeds the mere right to possession, such as part ownership of the premises, or a monetary investment in the rental property, then a simple tenancy agreement, as defined under the Act, has not been entered into.

I find that, in the case of a tenancy agreement with a right to purchase, the issue of jurisdiction will turn on the specific construction of the agreement(s). In situations where the parties intended a tenancy to exist *prior* to the exercise of the right to purchase, and the right was not exercised, so long as no funds were ever paid towards the purchase price, then I find that the Act may possibly apply and the arbitrator could possibly be authorized under the Act to assume jurisdiction.

However, according to the Residential Tenancy Guidelines, if the relationship between the parties is that of seller and purchaser of real estate, the Legislation would not apply, because the parties have not genuinely entered into a mere "*Tenancy Agreement*" as defined in section 1 of the Act. This would be the case regardless of the fact that the parties may have chosen to call the contractual agreement a "tenancy agreement". In the case where the funds changing hands constitute part of the proposed purchase price, it follows that the parties have entered into contractual terms that exceed a simple tenancy agreement.

In this instance, I find it is clear that the respondent did have a genuine ownership interest of some kind at the time the purported "tenancy" agreement was entered into because the respondent gave the owner a monetary payment that would never be permitted under the Residential Tenancy Act..

In the case before me, I find as a fact that funds were allocated to be used towards the purchase price of the property. I find that this tenancy arrangement is inextricably linked to a contingent agreement relating to the tenant's future right to purchase the property. It is apparent that the tenancy portion of the contract before me was integral to a formal property purchase agreement made between the applicant and the respondent.

Therefore, I find that, under the contract, the tenant was entitled to an interest that was beyond mere possession of, and license to occupy, the rental unit.

Given the above, I find that I must decline jurisdiction in the matter before me as I have determined that I have no authority under the Residential Tenancy Act to consider or render a decision on the landlord's application.

I decline jurisdiction in this matter on the basis that the tenant clearly has some form of proprietary interest in the property. I find that the document, put forth as a combined tenancy and purchase agreement is a contract which does not fall under the Residential Tenancy Act and therefore cannot be determined under the authority of the legislation.

Conclusion

Based on the determination that this tenancy relationship is not one that falls under the jurisdiction of the Residential Tenancy Act, I hereby dismiss the landlord's application in its entirety without leave to reapply.

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 11, 2013

Residential Tenancy Branch