



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *OPB, MNR*

### **Introduction**

This hearing dealt with an application pursuant to the *Residential Tenancy Act*. The applicant applied for an order of possession and for a monetary order for an unpaid installment towards the purchase of the rental unit.

The applicant served the respondent with the hearing package on January 22, 2014 by registered mail. Despite having been served the notice of hearing, the respondent did not attend the hearing. The applicant attended the hearing and was given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the applicant entitled to an order of possession and to a monetary order?

### **Background and Evidence**

On August 13, 2013, the applicant and respondent entered into a contract of purchase and sale. The applicant filed a copy of the contract into evidence. The subject of the contract is the dispute rental unit. A purchase price was agreed upon and on August 13, 2013 the respondent paid a deposit of \$7,500.00. A schedule of payments was recorded to enable the respondent to pay a total of \$40,000.00 as a deposit which would form part of the purchase price.

The parties also agreed that the respondent would occupy the rental unit as a tenant at a rent of \$2,200.00 a month plus taxes up to the completion date. The applicant stated that the respondent occupied the unit on September 01, 2013 and paid rent for the first few months. The respondent failed to pay rent on January 01, 2014 and the applicant served the respondent with a notice to end tenancy for non payment of rent.

The applicant stated that he contacted a lawyer for advice at a cost of \$500.00 and the lawyer advised him to apply for dispute resolution at the Residential Tenancy Branch.

The applicant stated that he did not receive the second installment towards the deposit which was scheduled to be paid on December 31, 2013. The applicant has applied for an order of possession and for a monetary order for rent for January and February 2014.

### **Analysis**

*Residential Tenancy Policy Guideline 27* addresses jurisdictional matters. This guideline states that if the relationship between the parties is that of seller and purchaser of real estate, the Legislation 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 if the parties have called the agreement, a tenancy agreement. If the monies that are changing hands are part of the purchase price, a tenancy agreement has not been entered into.

In this case, the tenant paid a deposit towards the purchase price of the property and therefore the *Residential Tenancy Act* does not apply and accordingly I decline to proceed due to a lack of jurisdiction.

### **Conclusion**

This 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: February 07, 2014

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Residential Tenancy Branch

