



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order for unpaid rent or utilities, for damage to the rental unit and to recover the filing fee from the Tenants for the cost of this Application.

The Landlord appeared for the hearing and provided affirmed testimony during the hearing and documentary evidence in advance of the hearing.

The Landlord testified that he served each of the Tenants with a copy of the Application, the Notice of Hearings documents and a copy of his evidence by registered mail on December 5, 2013, pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the “Act”). The Landlord provided both Canada Post tracking numbers and indicated that the Canada Post website confirmed that both Tenants had received the documents.

Section 90(a) of the Act states that a document served by mail is deemed to have been received 5 days after it is mailed. As a result, I find that the Tenants are deemed to have been served with the documents on December 10, 2013 in accordance with the Act.

There was no appearance for the Tenants or submission of documentary evidence prior to the hearing, despite being served notice of this hearing in accordance with the Act. The undisputed evidence of the Landlord has been carefully considered in this decision.

At the start of the hearing the Landlord testified that he only wanted to claim for unpaid rent in the amount of \$8,500.00 and as a result withdrew the remainder of his monetary claim against the Tenants. I also amended the Application, pursuant to Section 64(3) (c) of the Act, to remove the request for damages to the rental unit as per the Landlord’s withdrawal for this portion of the claim.

Issue(s) to be Decided

- Does the Act apply to this 'Rent to Purchase' agreement?
- Is the Landlord entitled to unpaid rent in the amount of \$8,500.00?

Background and Evidence

The Landlord testified that he purchased the rental property in 2009. On February 16, 2012 the Landlord and the Tenants engaged into a 'Rent to Purchase Agreement' (the "Agreement"). The document, which was provided as evidence, referred to the Landlord in this Application as the 'Seller' and the Tenants named in this Application as the 'Purchasers'. Some of the key points from the Agreement are as follows:

1. Period of Agreement to commence from April 1, 2012, and complete on June 30, 2014.
2. Purchasers agree to secure a mortgage for the property on July 1, 2014 in the amount of \$310,000.00.
3. Purchasers agree to pay rent to the seller in the amount of \$2,100.00 per month commencing on April 1, 2012 and ceasing on June 1, 2014.
4. Purchasers agree to pay to seller a flat fee of \$10,000.00 on June 25, 2014.

[Reproduced as written]

The Agreement goes onto say that during the period of April 1, 2012 to June 30, 2014 the Landlord will pay the property taxes, water and utility charges.

The Landlord testified that the property was intended for the Tenants to purchase for a price of \$310,000.00 at the end of the period in which the Tenants were required to pay rent. The Landlord testified that none of the rent payments were being made towards the cost of purchasing the house by the Tenants and that the agreement for the purchase of the property was separate to the period of time the Tenants were required to pay rent. The Landlord testified that the down payment was required at the end of the rental period and was understood to be a deposit for the house. No security deposit was taken from the Tenants.

The Landlord testified that the Tenants fell into rent areas in the amount of \$100.00 for May, 2013. The Tenants then failed to pay rent in the amount of \$2,100.00 for the months of June, July, August and September, 2013 resulting in a total amount of \$8,500.00, which the Landlord now claims.

The Landlord testified that during this time the Tenants kept promising to pay the rent but that they were unable to because one of them was seriously ill and needed the money for treatment. The Landlord took pity on the Tenants for these months until he informed them that they had to pay the outstanding rent in September, 2013.

The Landlord testified that on September 5, 2013 the Tenants informed him that they were going to vacate the rental suite at the end of the month but would pay all the outstanding rent owed before they left; no written notice was provided to the Landlord relating to this.

The Landlord prepared a 'Promissory Note' document which was signed by one of the Tenants and provided as evidence. The documents states the Tenants will pay \$8,500.00 to the Landlord in unpaid rent by October 31, 2013. The Landlord testified that the Tenants moved out at the end of October, 2013 without making any of the payments as promised in the note.

Analysis

Section 5 of Policy Guideline 27 to the Act provides guidance on agreements with a right to purchase and states the following:

"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 Acts. 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.

Similarly, a tenancy agreement is a transfer of an interest in land and buildings, or a license. The interest that is transferred, under section 1 of the Acts, is the right to possession of the residential premises. If the 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. In such a case the RTB may again decline jurisdiction because the Acts would not apply.

In the case of a tenancy agreement with a right to purchase, the issue of jurisdiction will turn on the construction of the agreement. If the agreement meets either of the tests outlined above, then the Acts may not apply. However, if 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 Acts may apply and the RTB may assume jurisdiction. Generally speaking, the Acts apply until the relationship of the parties has changed from landlord and tenant to seller and purchaser".

[Reproduced as written.]

I have considered the above provisions of the guideline along with the undisputed evidence provided by the Landlord and I find that the Act does apply in this case. This is based on the fact that rent was clearly payable for a fixed amount of time in the Agreement before the right to purchase the property was to take effect. The Landlord testified that the purchase price of the property is \$310,000.00 and the Agreement clearly reflects this amount after the rental period is over. I accept the evidence of the Landlord that the rental payments required under the agreement did not form part of the purchase price and there was a Landlord and Tenant relationship between the parties before the purchase aspect of the Agreement was to take place. I also accept that the \$10,000.00 deposit for the purchase of the property was not required until the rental period was over.

As I have assumed jurisdiction in this matter, I accept the undisputed testimony and documentary evidence of the Landlord that the Tenant owes the Landlord \$8,500.00 in unpaid rent as detailed above and award this amount to the Landlord.

As the Landlord has been successful in his claim, the Landlord is also entitled to recover the filing fee for the cost of the Application in the amount of \$50.00 pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is \$8,550.00.

Conclusion

For the reasons set out above, I grant the Landlords a Monetary Order pursuant to Section 67 of the Act in the amount of **\$8,550.00**. This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenants fail to make payment.

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: March 26, 2014

Residential Tenancy Branch

