



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's Application: CNR; FF
Landlord's Application: OPR; MNR; MNDC; FF

Introduction

This hearing dealt with cross applications. The Tenant seeks to cancel a 10 Day Notice to End Tenancy issued April 5, 2014 (the "Notice") and to recover the cost of the filing fee from the Landlord.

The Landlord seeks an Order of Possession; a Monetary Order for Unpaid Rent; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing

Preliminary Matter: Is This a Residential Tenancy Matter?

Background

The Tenant submitted that there is no tenancy agreement between the parties. He stated that the Landlord purchased the rental unit approximately 8 years ago and paid the down payment, but that the parties had a written agreement that the Tenant had an option to purchase the rental unit. He stated that he did not keep a copy of the agreement because he trusted the Landlord. The Landlord used to be the Tenant's employer.

The rental unit is a house. The Tenant testified that he did a lot of work on the house and the yard and that he spent about \$25,000.00 out of his own pocket making improvements. He stated that whenever there were repairs to be made, he did them.

The Landlord's agent stated that there was an option to purchase the house, but that it was only open for a three year period. She stated that the Tenant paid the Landlord the equivalent of the mortgage payments bi-weekly and at the end of three years, if he qualified for his own mortgage, the house would be transferred to the Tenant. She stated that on April 15, 2010, the three years ran out and the Landlord wrote to the

Tenant advising that the time had come to exercise the option; however, the Tenant could not qualify for a mortgage. The Landlord's agent submitted that thereafter and until the end of March, 2014, the Tenant paid \$3,000.00 a month in rent, which was deducted from his pay cheque by his employer (the Landlord). She stated that the Tenant resigned from his job on March 19, 2014 and has not paid any rent to the Landlord since March 21, 2014.

Analysis

There is no argument from the Landlord that there was an option to purchase the rental unit. However, I find that the Tenant did not provide sufficient evidence that the option to purchase was acted upon.

The Tenant did not provide any documentary evidence in support of his application, other than a copy of the Notice to End Tenancy. The Landlord provided 100 pages of documents including, but not limited to, proof of bi-weekly rental payments and proof of property tax payments/utility bills for the rental unit (in the name of the Landlord).

The Residential Tenancy Act defines a tenancy agreement as, "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 license to occupy a rental unit."

Based on the testimony provided, I find that there is an implied tenancy agreement between the parties and that I have jurisdiction to decide this matter under the Residential Tenancy Act.

Settlement Agreement

During the course of the Hearing, the parties came to an agreement to settle this matter. Pursuant to the provisions of Section 63 of the Act, I have recorded the terms of the settlement agreement as follows:

1. The parties agreed that the tenancy will end no later than June 30, 2014.
2. In full and final payment of all rent owed to the Landlord, **to and including June 30, 2014**, the Tenant will pay the Landlord, by e-transfer, the amount of **\$1,500.00 by 3:00 p.m., June 6, 2014**.
3. If the Tenant moves out of the rental unit on or before June 15, 2014, the Landlord will return the \$1,500.00 to the Tenant.
4. In support of this settlement and with the agreement of both parties I grant the Landlord an Order of Possession effective immediately. The enclosed Order of Possession may be filed in the Supreme Court and enforced as an order of that Court. **The Agent for the Landlord consented that the Landlord would not enforce the Order of Possession until June 30, 2014 if the Tenant pays \$1,500.00 by 3:00 p.m., June 6, 2014.**

- 5. If the Tenant does not pay the Landlord \$1,500.00 by 3:00 p.m. June 6, 2014, the Landlord may enforce the Order of Possession and the Tenant will have two (2) days to vacate the rental unit.**

Both parties' Applications for Dispute Resolution are dismissed without leave to reapply. I make no order with respect to recovery of the filing fees.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 29, 2014

Residential Tenancy Branch

