



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MANORLANE HOMES (KING GEORGE) INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, FF

Introduction

This application dealt with a landlord's application for a Monetary Order for unpaid rent and damage to a rental property. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters -- Jurisdiction

I determined it necessary to consider whether I had jurisdiction to resolve this dispute as the parties referred to and relied upon a "Contract of Purchase and Sale" entered into by the parties and concerning the subject property.

In summary, the subject property was formerly owned by the respondent. The respondent sold the property to the applicant and the sale completed on January 31, 2014. The agreement reached between the parties was memorialized in a "Contract of Purchase and Sale" and "Schedule to Contract of Purchase and Sale" executed by the parties on March 21, 2013 that I was provided as evidence by both parties.

The applicant's monetary claim was comprised of two components: unpaid rent for the period of February 2014 through May 2014 and compensation for damage to the property.

The claim for damage to the property pertained to the removal of components and fixtures of the subject property by the applicant prior to the possession date. As pointed out by the respondent, the Contract of Purchase and Sale permitted the Seller (the respondent) to remove various fixtures and components of the subject property up until the date possession was given to the Buyer (the applicant). As I do not have jurisdiction to enforce contracts other than tenancy agreements and having found the applicant's allegations concerning damage were substantially linked to a term in the Contract of

Purchase and Sale that is inconsistent with a tenant's rights and obligations under a tenancy agreement, I found I did not have jurisdiction to resolve that portion of the claim.

With respect to the claim for unpaid rent, I heard that since filing this application, the respondent delivered to the applicant payment of rent for the period of February 1, 2014 through to April 15, 2014, less a relatively small deduction for an unrelated dispute. As such, the primary dispute concerning rent was the applicant's entitlement to receive rent for the period from April 15, 2014 through to May 31, 2014.

During the hearing, I indicated I would accept jurisdiction to resolve that portion of the dispute during the hearing; however, upon further consideration I have found it appropriate to decline jurisdiction for the reasons provided below.

Term 2 of the Schedule to Contract of Purchase and Sale provides:

The Seller may elect to rent the Property from the Buyer after the Completion Date for a maximum of four months, at a rate of \$1,500.00 per month. The Seller will give the Buyer notice of this election not less than one full calendar months prior to the Completion Date. Failing such notice, the Seller will ensure it provides vacant possession of the Property on the Possession Date.

[reproduced as written]

The applicant submitted that on December 30, 2013 written notice ("the notice") was received from the respondent indicating he was going to exercise the option provided under term 2. The property transfer completed January 31, 2014 and the respondent continued to occupy the property until April 2014.

I noted that I did not have a copy of the notice before me. The respondent also claimed that he was not served with a copy of the notice to which the applicant was referring. The landlord was asked to read the content of the notice aloud, which he did. The respondent testified that he did not specifically recall signing the notice but acknowledged that he was signing a lot of legal documents at about that time. As such, he stated he could not deny the existence of the notice.

From what I heard the applicant, the notice did not specify a date as to when possession would be turned over to the applicant or the number of months the respondent wished to occupy the property. In response, the applicant submitted that it was presumed that the respondent was electing to occupy the property for the full four

months as permitted by term 2 and the applicant treated this arrangement as a fixed term tenancy. I also heard from the applicant that payment of rent was requested by way of a deduction from sales proceeds but the respondent refused. The applicant also prepared a tenancy agreement for the respondent's signature, indicating a fixed term tenancy set to expire May 31, 2014 but the respondent would not sign it.

The respondent submitted that the reason any notice he may have signed did not have an effective date or date of possession specified is because such a date was unknown to him at the time since he did not yet have other accommodation and he still had to remove a considerable amount of materials from the property. The respondent also indicated that the request for rent to be deducted from the sale proceeds and the request to sign a tenancy agreement were rejected because it was unknown as to what date possession would be given to the applicant. The respondent was of the position that from the outset the respondent had communicated to the applicant that the exact possession date was uncertain which is why term 2 of the Schedule provides that he had "up to" four months to vacate after the completion date.

As an alternative position, the applicant submitted that even if this were a month-to-month tenancy, the respondent did not give the applicant a month's notice to end the tenancy.

Under the Act, where parties have a fixed term tenancy, the tenancy agreement must specify the date the fixed term ends and what is to happen at the end of the fixed term. Based upon the content of the notice read to me by the applicant, I find the notice does not contain sufficient information to conclude the parties agreed that possession would be given to the applicant four months after the completion date, or May 31, 2014. Also of consideration is the wording of term 2 of the Schedule which provides that the respondent could elect to occupy the property for up to a maximum of four months. This wording suggests that the respondent could elect to occupy the property for less than four months. I find the wording of term 2 is inconsistent with requirements for fixed term tenancy agreements as a tenant may not end a fixed term tenancy early except in very specific circumstances provided under the Act that do not apply in this case. Rather, I find that if the parties had an agreement that the tenancy would end on the specific date of May 31, 2014 such would be clearly conveyed in either the notice or term 2 of the Schedule, or by way of the actions of the parties, which it is not.

I find that wording of term 2 is also inconsistent with a periodic tenancy (eg: month-to-month) as periodic tenancies may go on indefinitely and do not have a specific maximum term or expiry date. Since term 2 provided a maximum length of occupation I

find the parties were precluded from having a periodic tenancy under the Contract of Purchase and Sale.

In light of the above, term 2 of the Schedule to Contract of Purchase and Sale is inconsistent with requirements for tenancy agreements under the Act. The Act does contemplate inconsistent terms of tenancy by providing that such terms are not enforceable. Since term 2 was drafted as part of the sale agreement between the parties for the subject property, I find it inappropriate to set aside the enforceability of term 2 and apply the provisions of the Act to this arrangement, and I conclude that it is more appropriate that the parties seek to have the terms of the Contract of Purchase and Sale upheld in the appropriate forum. Therefore, I have declined to take jurisdiction with respect to the entirety of this claim.

Conclusion

I have declined to accept jurisdiction to resolve this dispute. The parties are at liberty to seek resolution in the appropriate forum.

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: September 19, 2014

Residential Tenancy Branch

