



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, O

Introduction

This hearing dealt with an Application for Dispute Resolution with the applicant seeking an order of possession.

The hearing was conducted via teleconference and was attended by the applicant, the respondent and the respondent's legal counsel.

Prior to the hearing the applicant had submitted a copy of a "Lease Option Contract" and at the outset of the hearing both parties provided testimony regarding this agreement.

The applicant submits that the tenancy began in August 2013 for a monthly rent of \$1,200.00 due on the 1st of each month. The applicant submits that as of November 1, 2015 the respondent would have to exercise his option to purchase. The applicant submits that the respondent had paid a deposit of \$5,000.00 that would be attributed to the purchase price if the option to purchase was exercised or returned if not.

The respondent submits that he agreed with the applicant's description except that he moved into the property in March 2013 and that a portion of the monthly rent was to go towards the purchase price should he exercise his option to purchase.

The "Lease Option Contract" itself stipulates that the applicant and respondent agree the respondent will rent the property for a term of 24 months beginning November 1, 2013 and ending on November 1, 2015.

The Contract goes on to state that the respondent will take possession of the property on October 1, 2013. Rent is described as the respondent paying the first payment of \$4,000.00 on August 24, 2013 "as rent for the property".

The Contract then states: "All rental payments shall be due and payable in advance of the 1 day of each and every month. An amount equal to \$1,200.00 for each month in which rent was paid shall be credited to the Tenant/Buyer and applied to the purchase price of the Property in the event that the Tenant/Buyer exercises its option..."

Residential Tenancy Policy Guideline #27 Section 5 speaks to the issue of jurisdiction regarding agreements that transfer an ownership interest. The Guideline stipulates that if monies that are changing hands are part of the purchase price a tenancy agreement has not been entered into.

It goes on to say that 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 stipulates that the test above (monies changing hands are part of the purchase price) then the *Residential Tenancy Act (Act)* does not apply.

Despite the applicant's testimony that all of the \$1,200.00 per month paid by the respondent is for rent, I find the contract entered into by the parties stipulates that all of the \$1,200.00 per month is a contribution to the purchase price of the property. As such, I find the monies paid by the respondent have contributed to the purchase of the property and the *Act* does not apply.

Issue(s) to be Decided

The issues to be decided are whether the applicant is entitled to an order of possession for landlord's use of property and for breach of an agreement, pursuant to Sections 49 and 55 of the *Act*.

Conclusion

Based on the above, I decline to accept jurisdiction in the matters outlined in this Application for Dispute Resolution.

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 11, 2014

Residential Tenancy Branch

