



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPL, OPR, SS, MND, MNR, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Applicants for an Order of Possession and a Monetary Order under the *Residential Tenancy Act* (the "Act").

The Applicants appeared for the hearing but the Respondent did not, despite being served with documents for this hearing by registered mail.

The Applicants provided affirmed testimony and written evidence. On examination of the Applicants' written evidence, I focused my attention to a document titled "Rent To Purchase". The document requires the Applicant to pay a security deposit of 5% which equates to \$6,500.00 towards a total purchase price of the property in the amount of \$130,000.00. Under this agreement the Tenant is required to pay \$700.00 per month of which 30% is applied to the total purchase price. The agreement was signed by the Respondent in the capacity of 'Purchaser/Renter' and by the Applicant as the 'Owner/Landlord'. The Applicants verified the above details in their oral testimony at the start of the hearing.

Analysis

Policy Guideline 27 to the Act explains the jurisdiction Arbitrators have under the Act. Section 5 of this guideline 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 policy guideline along with the oral and written evidence of the Applicants and I find that as this tenancy involves a rent to purchase agreement where a portion of the rent is intended to be applied to the total purchase price, as well as the security deposit amount requested being over the limit that can be required under the Act, I find that the Legislation does not apply to this tenancy and therefore I decline jurisdiction in this matter. The Applicants are at liberty to seek alternative legal remedies to address their dispute.

Conclusion

For the reasons set out above, I dismiss the Application **without** leave to re-apply, pursuant to Section 62(4) (b) of the Act.

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: October 03, 2014

Residential Tenancy Branch

