



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, FF

Introduction

This hearing was convened to address a claim by the landlord for an order of possession and a monetary order. Despite having been served with the application for dispute resolution and notice of hearing via registered letter sent November 25, 2014, the tenant did not participate in the conference call hearing.

Issue to be Decided

Does this tenancy fall within the jurisdiction of the *Residential Tenancy Act*?

Background and Evidence

The landlord's undisputed evidence is as follows. The tenancy began on June 1, 2014, shortly after the parties entered into a written agreement whereby the landlord agreed to sell the property to the tenant. The parties drafted a simple agreement which acknowledged that the landlords had received \$10,000 from the tenant, that the sale price of the home was \$280,000 and that after applying the deposit, there would remain \$270,000 owing, to be paid at the time of closing. The agreement also has the following clauses:

Buyer has (up to) 6 months to arrange payment of remaining balance or risk losing his deposit

Buyer to make monthly payments in the amount of \$1,300-, to be paid on or before the first of each month (6 post dated checks provided).

The parties also signed a residential tenancy agreement in which the tenant agreed to pay \$1,300 per month for a fixed term tenancy ending on December 1, 2014.

The landlord claimed that the agreement for purchase and sale of the property and the tenancy agreement were completely independent documents and that the rent was not applied toward the purchase price. The landlord seeks to recover 5 months of unpaid rent.

Analysis

The *Residential Tenancy Act* governs the relationship between landlords and tenants when the tenant does not have an ownership interest in the property. In order a tenancy to fall within the jurisdiction of the Act, the tenant cannot have any interest higher than a mere right to possession.

The document of purchase and sale which was signed by the parties lacks details and is ambiguous in most respects. Although the landlord claimed that the document clearly stated that rent was not applied to the purchase price, in fact the document does not state this. It simply expresses a monthly amount of \$1,300 which is expected to be paid on or before the first of each month and does not state how these payments are to be applied.

Because a deposit on the property has already been paid and because it is possible that the monthly payments were intended to for part of the overall purchase price, I find it likely that the tenant has an interest in the property which is greater than a mere right to possession. For this reason, I decline jurisdiction.

Conclusion

Jurisdiction is declined.

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: December 18, 2014

Residential Tenancy Branch

