



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MDSD & FF

### Introduction

A hearing was conducted by conference call in the presence of a representative of the applicant and in the absence of the respondents although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the 10 day Notice to End Tenancy was personally served on the respondents on November 22, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the tenants by mailing, by registered mail to where the respondents reside on December 2, 2014. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

There is an issue as to whether the Residential Tenancy Act applies.

The parties signed a written document that was titled PPHR DISCLOSURE STATEMENT. The respondents moved into the property on February 10, 2013 and vacated the property on December 18, 2014. The respondents agreed to make monthly payments of \$3600 payable on the 15<sup>th</sup> of each month.

The relevant provisions of the PPHR DISCLOSURE STATEMENT included the following:

- Paragraph 1 refers to an Activation fee of \$625 and gave the respondents 10 business days to cancel agreement the agreement. It further provided “The sole purpose of this transaction is to engage in the search of a personal residence that is suitable for the Applicant, equal to or less than the approved amount that was provide by PPHR, for lease purchase agreement.
- The document states the purchase price is \$720,000, security deposit of \$20,000, commitment fee of \$6000, total monthly lease payment \$3600, lease term 2 years, future purchase price \$760,000 and Total Down at End of Term \$20,000.
- Paragraph 3 discusses a credit rebuilding program
- Paragraph 4 deals with the tenant’s consent to the provision of personal information for the purpose of obtaining credit from third parties
- Paragraph 6 deals with the security deposit and option fee.

The representative of the landlord testified that the tenant was supposed to pay a security deposit of \$20,000. However, only \$5000 was paid. Also, the tenant failed to pay the commitment fee of \$6000.

The Application for Dispute Resolution filed by the applicant seeks the following:

- Unpaid rent from October 15, 2014 – \$1602
- Rent from November 15 2014 - \$3600
- Unpaid utilities (Fortis) - \$1366.12
- Unpaid security deposit –\$15,000

- Commitment fee - \$6000

Preliminary Issue:

The definition of tenancy and tenancy agreement is found in section 1 of the Residential Tenancy Act as follows:

**"tenancy"** means a tenant's right to possession of a rental unit under a tenancy agreement;

**"tenancy agreement"** means 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 licence to occupy a rental unit;

Policy Guideline 27 includes the following:

**“5. TRANSFER OF AN OWNERSHIP INTEREST**

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.”

Section 13 of the Residential Tenancy Act provides as follows:

**Requirements for tenancy agreements**

**13** (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;
- (b) the correct legal names of the landlord and tenant;
- (c) the address of the rental unit;
- (d) the date the tenancy agreement is entered into;
- (e) the address for service and telephone number of the landlord or the landlord's agent;
- (f) the agreed terms in respect of the following:
  - (i) the date on which the tenancy starts;
  - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
  - (iii) if the tenancy is a fixed term tenancy,
    - (A) the date the tenancy ends, and
    - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date;
  - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;
  - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;
  - (vi) which services and facilities are included in the rent;
  - (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

### Analysis

After carefully considering all of the evidence I determined that I do not have jurisdiction and I declined to hear the matter for the following reasons:

- The only document outlining the agreement is titled PPHR DISCLOSURE STATEMENT. The essence of the arrangement between the parties is a lease to purchase. It appears to give the respondents an option to purchase the property. This is a higher interest in the property than a tenancy. It is not a residential tenancy agreement.
- Section 13 of the Residential Tenancy Act imposes an obligation on a landlord to prepare a Residential tenancy agreement that complies with this section. The applicant failed to do so.
- It is possible for the parties to enter into separate agreements involving a tenancy agreement and an option to purchase. However, it is the obligation of the applicant to ensure this has been done. The applicant failed to do this as the essence of the agreement between the parties is a lease to purchase which involves the payment of monies that takes it outside of a residential tenancy agreement.
- The document does not identify the address of the property.
- The Residential Tenancy Act only permits a landlord to obtain a security deposit of a maximum on ½ of the rent. The monthly payment made by the respondent was \$3600. The document recording their agreement indicates the security deposit is \$20,000 which far exceeds what is permitted under the Act as a security deposit. While the respondents only paid a deposit of \$5000 the applicant is seeking a monetary order for the balance which is not permitted under the Act.
- The Application for Dispute Resolution makes a claim of \$6000 for a commitment fee. This fee is not consistent with a tenancy agreement.

**As a result I declined to hear this claim on the basis that I do not have jurisdiction.**

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: January 05, 2015

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Residential Tenancy Branch

