



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – CNR

For the landlords – OPR, OPB, MNR

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The male tenant applied to cancel a 10 Day Notice to End Tenancy for unpaid rent or utilities. The female landlord applied for an Order of Possession for unpaid rent or utilities; for an Order of Possession because the tenant breached an agreement with the landlord; and for a Monetary Order for unpaid rent or utilities.

The tenant's legal advocate and the landlords attended the conference call hearing. The landlords gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the parties were permitted to provide additional evidence after the hearing had concluded in the form of the lease to own agreement. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The tenant's advocate raised the issue of jurisdiction and stated that the lease agreement is a lease to purchase agreement and not a tenancy agreement.

Issue(s) to be Decided

- Does the Residential Tenancy Branch have jurisdiction in this matter?
- If so, Is the tenant entitled to have the Notice to End Tenancy cancelled?
- Is the landlord entitled to an Order of Possession for unpaid rent or utilities or because the tenants breached an agreement with the landlord?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?

Background and Evidence

The parties agreed that this tenancy started on August 15, 2014. Rent for this unit is \$800.00 per month due on the 1st of each month in advance. The male tenant is the only tenant named on the lease/purchase agreement. A security deposit of \$400.00 was paid on August 15, 2014.

The landlords testified that:

The lease to purchase agreement was entered into with the male tenant. The rent was agreed at \$800.00 per month. Of this, \$400.00 each month went towards the down payment for the tenant to purchase the home at \$120,000.00 and \$400.00 went towards the rent. This was a two year term agreed upon for the down payment to be paid. The lease to purchase agreement also states that if the tenant decided to cancel the lease or is unable to get financing the half of the rent payments applying to the down payment are forfeit and are considered straight rental costs.

On January 01, 2015 the tenant sent the landlords a text message (copy provided in evidence) in which the tenant informed the landlords that he does not want the house as his family want to return to the coast and the tenant will be breaking the lease.

The tenant failed to pay rent for January, 2015. A 10 Day Notice to End Tenancy was posted to the tenant's door on January 18, 2015, a second copy was also sent by

registered mail. This Notice informed the tenant that he had five days to either, pay the rent, file an application to dispute the Notice or vacate the rental unit by February 05, 2015.

The tenant did not vacate the unit and no rent has since been paid for January, February or March, 2015. The landlords testified that the Residential Tenancy Branch has jurisdiction in this matter because by defaulting on the lease to purchase agreement by not making the monthly payments than the agreement reverts to a tenancy agreement.

The landlords seek an Order of Possession and a Monetary Order to recover unpaid rent. The landlords orally requested that the amount claimed is amended to include the unpaid rent for March as the tenant still has possession of the rental unit.

The tenant's advocate argued that the Residential Tenancy Branch does not have jurisdiction in this matter as the parties have a lease to purchase agreement in place. Although the tenant has not paid rent for three months this lease to purchase agreement remains valid and the landlords will need to deal with this matter in a different legal forum.

Analysis

In the matter of jurisdiction I refer the parties to the Residential Tenancy Policy Guidelines # 27 which deals with jurisdictional issues. This guidelines states, in part, that:

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.

Having considered both arguments in the matter of jurisdiction I find that the agreement provided in evidence clearly states that this is a lease agreement for sale of the property and that half the monthly rent paid is towards the down payment for the purchase price. Regardless of whether or not the tenant fulfilled this agreement, the agreement is clearly not a tenancy agreement and the tenant has more of an interest in the property than that of a renter. Consequently, I must decline jurisdiction in this matter. The landlord must seek settlement of this matter through an alternative legal forum.

Conclusion

Due to the reasons set out above I decline jurisdiction in this matter and the landlord's application is dismissed.

The tenant's application is also dismissed.

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: March 02, 2015

Residential Tenancy Branch

