



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNR, OP, OPT, RPP

### Introduction

This was an application to cancel a notice to end a tenancy for non-payment of rent dated August 25, 2015, as well as an application for the return of property, and an order for possession for the tenants. There was a cross application for an order for possession and monetary order for unpaid rent pursuant to the aforesaid notice to end the tenancy. GJ appeared for the applicant occupants and DM and RM as well as their counsel for the respondent applicants.

### Issue(s) to be Decided

Was their a valid tenancy?

Is any rent owing?

Is an order for possession available?

### Background and Evidence

The parties admitted service of their applications.

RM and DM testified that they granted possession of the unit to their daughter BM on or about November 24, 2009. They testified that she was to pay them \$ 1,000.00 per month, and pay all utilities and expenses. DM admitted that it was agreed that if BM consistently and diligently made all these payments then it was agreed those monies would go towards the purchase of the unit. RM testified that the purchase price was \$ 190,000.00 and that DM and RM had paid a \$ 40,000.00 down payment. DM and RM

were the registered owners. DM testified that things did not go well. BM did not make consistent or diligent payments. In fact BM only paid \$ 1,000.00 per month for about two years. Thereafter there were fewer payments made and in fact none had been made for the last six months. DM and RM submit that as BM never adhered to the original agreement the arrangement was merely that of landlord and tenant. They submit that as the “tenants” BM and her spouse GJ were in breach of the tenancy agreement they were entitled to an order for possession and a monetary order for the unpaid rent amounting to \$ 6,000.00.

GJ, spouse of BM who moved into the unit in April of 2013, testified that there never was a tenancy. He understood from participating in the conversations between BM and her parents DM and RM that all monthly payments were to be applied towards the equity of the unit and that as long as payments were made BM would eventually acquire ownership in the unit. All payments were referred to as “mortgage payments”. The term “rent” was never used. Apparently the relationship broke down and because BM was unable to make payments for a while. Subsequently BM wished to end the arrangement. Emails were exchanged between the parties discussing some form of settlement.

GJ read into evidence one email authored by DM addressed to BM dated January 23, 2015. The relevant portions of that email are as follows:

“ ...We can sell the condo. Let us know **how much equity you have**..... So we can list it for sale as this is what you want. We have no more money to give you unless it is sold....”  
(my emphasis added)

GJ submitted that the email proved that there was a contract for granting BM eventual ownership of the unit. There is a dispute now between the parties regarding all monies advanced to BM as alleged loans, and how much money was paid by BM. GJ submits that there is not a tenancy agreement and that I do not have jurisdiction under the Residential Tenancy Act.

DM in reply submitted that the letter of January 23, 2015 was merely confirming that her daughter had not lived up to the original agreement and that they wished to settle matters with her by selling the property. DM testified that she wanted to know how much of an interest or equity BM thought she had.

Counsel for DM and RM submitted that as BM had not paid the down payment and that her monthly payments never amounted to the actual amount of the mortgage which was

in his clients' name, there was never an agreement to a purchase. He submitted it was always a tenancy agreement.

### Analysis

Section 27.5 of the Residential Policy Guidelines deals with jurisdiction and states that:

#### **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 arbitrator 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 arbitrator may assume jurisdiction. Generally speaking, the Acts apply until the relationship of the parties has changed from landlord and tenant to seller and purchaser.

DM admitted that it was always intended that BM either had a right to purchase or would purchase the unit provided she made minimum monthly payments of \$ 1,000.00 diligently and consistently. DM and RM testified that this did not happen and therefore that this arrangement was a tenancy giving them the right to enforce its terms.

Based on the evidence of the parties and the admissions made by DM and RM I find that there was an agreement to transfer ownership in the property which was inconsistent with a tenancy agreement which would grant simply the right of possession. The terms were; that as long as BM was able to make monthly payments of a minimum of \$ 1,000.00, the ownership would be transferred to her when the original purchase price was paid.

It is trite law that a contract requires a meeting of the minds on all the essential terms. Here it appears that all of the parties envisioned some sort of agreement to transfer ownership. I find there is no evidence that the parties ever agreed to a tenancy. I find that neither BM nor GJ were aware of or consented to any terms of an alleged tenancy agreement. Accordingly, I do not find that DM and RM were able to unilaterally convert the original agreement into some form of tenancy.

I find that pursuant to Policy Guideline 27.5, the intent of their contract or relationship was akin to vendor and purchaser with the eventual object of transferring ownership in the property in question. I further find that it was intended that that BM would take an interest in the land greater than a right to possession. Accordingly I find that the Residential Tenancy Act does not apply here. I have dismissed all of the applications herein.

### Conclusion

I found that I do not have jurisdiction under the residential Tenancy Act. I have dismissed all of the parties' applications herein. There will not be recovery of any of the filing fees herein.

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 26, 2015

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Residential Tenancy Branch

