



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNR, ERP, FF, O

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72;
- an "other" remedy.

The landlord did not attend this hearing, although I waited until 0956 in order to enable the landlord to connect with this teleconference hearing scheduled for 0930. The applicant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The applicant was accompanied by her agent.

The agent testified that the applicant served the landlord with the dispute resolution package on 13 August 2015 by registered mail. The agent provided me with a Canada Post tracking number. On the basis of this evidence, I am satisfied that the landlords was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

### Mootness

The agent informed me that he and the applicant had vacated the property. As the applicant had vacated the property, the following issues are moot:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

As these issues are moot, I decline to consider them.

### Issue(s) to be Decided

Does the Residential Tenancy Branch have jurisdiction to consider this application?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the applicant and agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings around it are set out below.

On 3 March 2014, the applicant and respondent entered into an Option to Purchase agreement. The applicant paid \$3,500.00 on 1 April 2014. The applicant testified that she paid a total of \$7,000.00 in deposits. The Option to Purchase agreement provided for monthly payments of \$605.00 from the applicant to the respondent. The applicant testified that she made thirteen monthly payments. The purchase price of the property was \$380,000.00. The "Last Option Expiry Date" is 31 July 2016.

"Option Fee" is defined in the Option to Purchase agreement:

"Option Fee" means the collective total of the Deposit and the Total Monthly Payments made by the Optionee to the Owner

Clause 2.3 of the Option to Purchase sets out the terms of exercise of that option:

The Optionee may exercise the Option at any time until 5:00 pm on the Last Option Expiry Date by delivering to the Owner written notice of the exercise of the Option together with an executed subject removal document to make the Contract a binding agreement. If the Option is exercised as set forth in this section 2.3, this Agreement shall become a binding agreement for the purchase

and sale of the Lands which shall be completed upon the terms and conditions of the Contract on the Closing Date.

Clause 2.5 of the Option to Purchase sets out that the Option Fee will be applied to the purchase price.

The agent testified that he believes that the option is still viable and could be exercised if the applicant wished to.

### Analysis

Subsection 2(1) of the Act sets out that:

Despite any other enactment..., this Act applies to tenancy agreements, rental units and other residential property.

“Tenancy agreement” is defined in section 1 of the Act:

"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;

*Residential Tenancy Policy Guideline*, “27. Jurisdiction” (Guideline 27) sets out:

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.

...

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 [if the relationship between the parties is that of seller and purchaser of real estate or 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 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.

[emphasis added]

In order for me to consider the application, there must be an agreement that is in respect of possession of a rental unit, but cannot create an interest greater than this by conveying something “extra” to the applicant. Pursuant to subsection 62(2), I have the jurisdiction to make any finding of fact or law that is necessary or incidental to making a decision or order under the Act. If I find that the agreement continues to convey an interest in the land, equitable or otherwise, that entitled the applicant to the possession of the rental property, I would be precluded from considering this issue as the agreement at issue would not be a “tenancy agreement” within the meaning of the Act.

In this case the applicant paid amounts towards the purchase price by way of the Option Fee. I have not been provided with evidence that indicates that the Option Agreement is extinguished. The Last Option Expiry Date is still many months away. On this basis, I find that the existence of the Option Agreement conveys an interest in land greater than that of a tenancy agreement. On this basis, I find that I do not have jurisdiction to consider the matter.

#### Conclusion

I decline jurisdiction over the application on the basis that the parties have not entered into a tenancy agreement within the meaning prescribed by the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: November 12, 2015

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Residential Tenancy Branch

