



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR

Introduction

The Applicant seeks to cancel a notice to end the tenancy.

The parties gave affirmed testimony at the Hearing.

Preliminary Matter – Jurisdiction

The Applicant CC provided the following testimony:

The parties entered into an oral contract in October, 2013. They agreed that CC would purchase the rental unit for \$130,000.00. Monthly rent is \$540.00. CC is also required to pay \$149.00 into the Respondent UV's "trust account" towards the payment of property taxes. With UV's consent, at some point she increased her monthly payment to \$800.00. CC has paid approximately \$11,000.00 towards improvements on the property. CC stated that she has paid all rent due to UV with the exception of rent for February, 2014. She testified that UV forgave rent for February, 2014, because she made drywall repairs to the rental unit.

The Respondent UV provided the following testimony:

There were two separate oral agreements; one was a tenancy agreement and the other was a "purchase to own" agreement. Purchase price was \$145,000.00 at 5% interest. Rent is \$700.00 plus \$75.00 per month to go towards taxes and insurance. UV was not consulted about any improvements and was unaware that CC was incurring costs towards improvements until he received her documentary evidence. UV agreed to forgive 2 months' rent, not one. The Tenant stopped paying rent and owed \$5,600.00 on November 1, 2015.

Analysis

Residential Tenancy Policy Guideline 27 provides, in part:

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.

In this case, the parties disagreed with respect to the amount of rent which was owed, whether or not the Tenant owes any rent, or whether CC has exercised her right to purchase the rental unit. If the Tenant paid \$689.00 (\$540.00 + \$149.00), and rent is actually \$700.00, then no money may have been paid towards the purchase of the rental unit. In the absence of a written contract, I find that there is insufficient evidence to make a determination.

Based on the testimony of both parties, I find that the Applicant **may** have an interest in the property which exceeds the right to possession of the property. I find that there is insufficient evidence that the Residential Tenancy Act applies in this case, and I decline to accept jurisdiction. If the Supreme Court finds that the Residential Tenancy Act applies, the parties will be at liberty to file another Application for Dispute Resolution.

Conclusion

I decline to accept jurisdiction in this matter. If the Supreme Court finds that the Residential Tenancy Act applies, the parties will be at liberty to file another Application for Dispute Resolution.

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 13, 2016

Residential Tenancy Branch

