



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes CNR, MNR, MNDC, OLC, PSF, LRE, RR, RP, ERP, FF

### **Introduction**

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent; a monetary order for damage or loss; an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement; an order to the landlord to provide services or facilities required by law; an order to the landlord to make repairs (or emergency repairs) to the rental unit; an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided; authorization to change or to set conditions on the landlord's right to enter the rental unit; and authorization to recover the filing fee for this application.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. On inquiry with respect to each submission of evidence, both parties confirmed receipt of the other's evidentiary materials for this hearing.

Before addressing the issues raised in the tenants' application, it was necessary to hear submissions from both parties with respect to jurisdiction. After hearing submissions regarding jurisdiction and the tenants' application for emergency repairs, this matter was adjourned pending my decision. At the conclusion of the hearing, the parties were advised that they would be provided with a decision and that the hearing would be reconvened in the event that I found I have jurisdiction to hear this matter.

### **Preliminary Issue: Jurisdiction**

By way of background, a "Lease Option Contract" was signed by both parties on March 29, 2014. The Contract states,

The term of this Lease/Option shall be for a period of 24 months commencing on May 1, 2014 and ending on April 30, 2016. The term may be extended if the Landlord/Seller agrees for 1 period of 12 months, unless the Tenant/Buyer gives

notice to the Landlord/Seller of its intent to terminate this Lease/Option, by mailing a written notice to the last provided address of the Landlord/Seller, or until such time as the Tenant/Buyer exercise its option to purchase the Property. Liability for payment will not extend beyond notice to terminate this agreement.

And

Tenant/Buyer agrees to pay the lender of Landlord/Seller's current mortgage or trust deed, the sum of \$1000.00 per month with the first payment beginning May 1, 2014 as rent for the Property, for the term of this Lease/Option, and during any extension thereof. All rental payments shall be due and payable in advance of the 10<sup>th</sup> day of each and every month. An amount equal to \$400.00 for each month in which rent was paid, shall be credited to the Tenant/Buyer and applied to the purchase price of the Property in the event that the Tenant/Buyer exercises its option hereunder.

Below the signatures of the parties on the contract, the contract states,

UPON SIGNING OF THIS AGREEMENT THE TENANT/BUYER WILL MAKE A DEPOSIT CHEQUE PAYABLE TO THE LANDLORD/SELLER IN THE AMOUNT OF \$4000.00. THIS AMOUNT WOULD BE CREDITED TOWARDS THE AGREED UPON PURCHASE PRICE... [&]... SHALL BE NON-REFUNDABLE...

The tenants submitted that the monthly amount they paid was described as "rent" and therefore this agreement amounted to a residential tenancy. The tenants also submitted that while the original option to purchase has not yet expired, they have opted out of the agreement. The tenants submitted that they have opted out by reducing their monthly payments from \$1000.00 to \$600.00 thereby no longer providing the additional \$400.00 to go towards any purchase of the property. Tenant DK argued that the landlord's acceptance of this lesser monthly amount equates to acceptance of a change to the contract.

The landlord submitted that the description of the monthly payment of "rent" needs to be interpreted within the context of the entire agreement. He testified that this agreement was never intended as a rental: it was always intended as a "purchase plan". He submitted that the option to purchase has not expired and the tenants have not opted out, in a way sufficient to change the contract. He submitted that the tenants have failed to pay the entire monthly amount for approximately 3 months. However, the landlord referred to clause 13 of the contract which states,

The parties hereto agree that this Lease/Option comprises the entire agreement of the parties and supersedes all prior written or oral agreements, representations, warranties, negotiations or understandings. This Lease/Option may not be amended except in a [sic] writing executed by all the parties hereto.

In this case, the agreement submitted as evidence at this hearing indicates that \$400.00 “for each month in which rent was paid, shall be credited to the Tenant/Buyer and applied to the purchase price of the Property in the event that the Tenant/Buyer exercises its option hereunder.” and that “the Tenant/Buyer, as part of the consideration herein, is hereby granted by the Landlord/Seller the exclusive right, option, and privilege of purchasing the Property at any time during the term of this Lease/Option or any extension thereof.”

Neither the landlord nor the tenants opposed the adjournment of this matter for the issue of jurisdiction to be considered and decided. However, before the conclusion of this hearing, the tenants requested that an order for emergency repairs be issued. Tenant CK testified that there is a problem with the water pressure in the residence. While the tenants initially stated they had “no water”, on further discussion, Tenant CK stated that “a couple can’t live comfortably with this level of water”, meaning that the water pressure is insufficient for two people in the residence. She testified that sometimes her guests have to go to the outhouse and sometimes they have to go to the well in the rural area they reside.

### **Analysis**

Before considering the substantive issues in this matter, the issue of jurisdiction arises. The relevant sections of the *Act* are provided below,

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

**2 (1)** 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 No. 27 addresses “jurisdiction”,

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]

Both parties agree that the formal written agreement (the lease option contract) between the parties has not expired. The expiry date of the agreement is April 30, 2016. The tenant argues that, by paying a lesser amount than the monthly amount required by their contract, they have opted out or altered the essential nature of their agreement. However, the landlord rightly points to section 13 of the contract which clarifies an earlier provision of the contract: "This Lease/Option may not be amended except in a [sic] writing executed by all the parties hereto."

I note that correspondence (including emails) between the parties as late as December 2015 shows that both parties continue to act as if the agreement is in place, as if the relationship is that of seller and purchaser of real estate. In an email dated December 2, 2015, the tenant/buyer states, "As of December 1, 2015 you are given notice that we are ending our agreement.... We will vacate the property the end of May 2016... we will deduct the \$400.00 towards the purchase price paying only the \$600.00 rent amount as stated in the lease agreement." The contract, however, only allows termination of the contract after the 2 year expiry date "by mailing a written notice to the last provided address of the Landlord/Seller, or until such time as the Tenant/Buyer exercise its option to purchase the Property".

At the beginning of the agreement between the parties, the landlord received \$4000.00 as a non-refundable deposit to be credited to the purchase price if the option to purchase is exercised but not returned to the buyer if the option to purchase is not exercised. I find that this agreement includes provisions to addresses a deposit towards purchase funds; an ongoing amount credited from the monthly payments; as well as a return of amounts beyond the deposit if the option to purchase is not exercised.

As a matter of course in any purchase agreement, money has changed hands between the parties towards the ultimate purchase price. I find that the tenants continue to hold an interest in the property as they have not yet taken the required steps to terminate the contract. I find that the agreement was not extinguished by the tenant's December 2, 2015 email or the tenant's unilateral decision to reduce their monthly payment. In particular, the tenants have made payment to the landlord towards the purchase price that totals approximately 1% of the total purchase price, including an initial payment of \$4000.00. The parties must be clear and unwavering in their position if they wish to end this agreement. I find the agreement continues to convey an interest in the land that entitled the tenants to the possession of the rental property.

Subsection 62(2) of the *Act* allows an arbitrator to make any finding of fact or law that is necessary or incidental to making a decision or order. I find that the agreement is not extinguished. Accordingly, I find that the parties have not entered into a tenancy agreement within the meaning of the *Residential Tenancy Act*. Therefore, I do not have jurisdiction to consider this claim.

EMERGENCY REPAIR APPLICATION: Tenant CK testified that there is a problem with the water pressure in the residence. However, the problem described did not meet the definition for an emergency repair

### Conclusion

I decline jurisdiction to hear this matter.

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: February 15, 2016

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Residential Tenancy Branch

