



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RPP, FF

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the respondent to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order requiring the respondent to return the applicants' personal property pursuant to section 65; and
- authorization to recover the applicants' filing fee for this application from the respondent pursuant to section 72.

The applicant PG (the applicant) and the respondent attended this hearing. No issues of service were raised by either party.

At the commencement of the hearing, I raised my concern with the parties that the Residential Tenancy Branch lacked jurisdiction to hear the applicant.

Preliminary Issue – Jurisdiction

The respondent and applicant are former spouses. The subject property was jointly owned by the parties.

As part of a separation agreement registered 28 January 2016, the applicant was ordered to transfer his interest in the subject property to the respondent.

Clause 4.6 of the separation agreement terminates the applicant's interest in the subject property:

[The applicant] agrees that once this Agreement has been executed that he will have no further interest in the Condominium and that he will not at any point in the future seek regain an interest in the Condominium or seek to overturn this Agreement so far as it relates to the Condominium.

Clause 4.7 sets out compensation payable for the applicant's use and occupancy of the subject property after transfer:

[The applicant] will bring the Mortgage and strata fee payments on the Condominium up to date prior to the transfer...and continue to pay the scheduled payments on the mortgage and strata fees until he moves out the Condominium in place of rent. ...

Title to the subject property transferred from the applicant to the respondent in accordance with the separation agreement on or about 23 March 2016.

The applicant testified that he paid a monthly fee to live in the subject property. The applicant submits that the payment constituted a rent payment and meant that the applicants were tenants within the meaning of the Act and accordingly the Residential Tenancy Branch has jurisdiction in this matter.

The respondent submits that the Residential Tenancy Branch does not have jurisdiction in this application. The respondent testified that the mortgage and strata fee were paid as compensation for the applicants' use of the subject property.

The jurisdiction of the Act, and in turn my jurisdiction, is set out in section 2 of the Act. 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;

In order to have a tenancy agreement, there must be an intention by the parties to form the legal relationship of landlord and tenant. Without this intention no enforceable agreement under the Act arises from the relationship.

This relationship lacks the indicia of a tenancy agreement. In particular, the applicant and respondent are former spouses, the subject property was family property dealt with in the course of a separation agreement, the agreement sets out that the monthly payments were instead of rent, there is no written tenancy agreement, and the applicant is a former owner of the subject property. On this basis, I find that this is a dispute between former spouses arising out of a family law matter. This is not a matter within the jurisdiction of the Residential Tenancy Branch.

Conclusion

I decline jurisdiction over this application.

I make no determination on the merits of the application. Nothing in my decision prevents either party from advancing claims before a court of competent jurisdiction.

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: June 14, 2016

Residential Tenancy Branch