



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, O

Introduction

This hearing was convened by way of conference call in response to an application for an Order of Possession for unpaid rent or utilities and other issues.

Service of the hearing documents, by the applicant to the respondents, was done in accordance with section 89 of the *Act*; served by registered mail on May 20, 2016. Canada Post tracking numbers were provided by the applicant in documentary evidence. The respondents were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The applicant's agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the respondents, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Jurisdictional Issues

On examination of the applicant's documentary evidence, I focused my attention to a document titled "Purchase Agreement". This document states, in part, that the parties have agreed to the sale of the above named property and the purchase price is \$25,000.00; the vender agrees to carry the balance of the purchase price forward; the purchaser shall provide the vendor with payments of \$500.00 on June 12, 2015 and every two weeks from there forward for twenty-five months until the full purchase price is paid; the purchase price includes the monthly pad rent that the vendor will pay during the term of the contract; should the purchaser fail to make payments within 60 days of payment being due the purchaser agrees to surrender the property to the vendor; the

parties agreed that if the purchaser fails to complete purchase of the property for any reason, no refunds or credits shall be due to renter. The ownership of the property shall remain in the vendor's names until such a time as the agreement is satisfied. The document also lists other conditions.

The applicant's agent testified that when her parents moved out of the mobile home the respondent asked if she could rent it and the applicants said she could purchase the mobile home and pay monthly for it. The applicant's agent testified that she drew up this purchase agreement for her parents and intended it to be a rent to own agreement. The tenants have only made four payments towards the purchase price and have therefore null in void this agreement.

Analysis

I refer the parties to the Residential Tenancy Policy Guideline # 27 which provides guidance in the matter of jurisdiction that Arbitrators have under the Act. Section 5 of this guideline provides guidance on agreements with a right to purchase and states the following:

"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”.

[Reproduced as written]

I have considered the above provisions of the Policy Guideline along with the oral and written evidence of the applicant and I find that as this tenancy involves a purchase agreement contract where the money paid was intended to be applied to the total purchase price and therefore the relationship between the parties is that of seller and purchaser of real estate and not that of landlord and tenant. I therefore find that the Legislation does not apply to this matter and I decline jurisdiction. The parties are at liberty to seek alternative legal remedies to address their dispute.

Conclusion

For the reasons set out above, I decline jurisdiction in this matter and I dismiss the application **without** leave to re-apply, pursuant to Section 62(4)(b) of the *Act*. 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: June 21, 2016

Residential Tenancy Branch