



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: 0

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*. The landlord applied for “other” and explained in the application that he was looking for an order of possession, pursuant to a fixed term tenancy agreement that had ended and required the tenant to move out.

The landlord also testified that the parties had entered into a “*Rent to own (Option to Purchase) Contract*” and filed a copy of the contract.

The applicant served the respondent with the hearing package on June 02, 2016, by registered mail to the rental unit and filed a copy of the tracking slip. The package was returned to the landlord marked “unclaimed”

Residential Tenancy Policy Guideline No. 12 provides that, where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Based on the landlord’s evidence and pursuant to section 89 and 90 of the *Act*, I find that the tenant has been deemed served with the landlord’s dispute resolution hearing package on June 07, 2016, 5 days after the mailing of the package. The tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to an order of possession? Does the *Residential Tenancy Act* apply in a situation such as this?

Background and Evidence

On December 29, 2013, the landlord and tenant entered into a rent to own contract with an option to purchase the rental unit. On December 30, 2013, the parties entered into a fixed term tenancy agreement with an end date of May 15, 2016. At the end of the term the tenant was required to move out. The landlord filed copies of both the contracts.

Based on the rent to own contract, the tenant was required to put down a deposit of \$40,000.00 by September 30, 2015, which would be applied to the purchase price, when the tenant exercised the option. \$575.00 of the tenant's monthly contribution of \$2,500.00 would also be applied to the purchase price.

The landlord testified that the tenant did not fully abide by the rent to own contract and missed some of the payments that would contribute to the purchase price. In addition the tenant did not make any payment for the month of June 2016

Analysis

Residential Tenancy Policy Guideline 27 addresses jurisdictional matters. This guideline states that 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 an option to purchase, the issue of jurisdiction will turn on the construction of the agreement. If the agreement meets the test 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 Residential Tenancy Branch may assume jurisdiction.

In this case, the tenant paid monthly contributions that were credited towards the purchase price of the property. In addition, the tenant may also have paid a deposit towards the purchase price. Therefore the *Residential Tenancy Act* does not apply and accordingly I decline to proceed due to a lack of jurisdiction.

Conclusion

The landlord's application is dismissed.

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 30, 2016

Residential Tenancy Branch