



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPL, CNL, FF

### Introduction

This hearing dealt with two related applications. One was the landlord's application for an order of possession based upon a 2 Month Notice to End Tenancy for Landlord's Use dated November 28, 2015 and the other was the tenant's application for an order setting aside that notice. Both parties appeared and gave affirmed evidence. No issues regarding the exchange of evidence were identified.

With the consent of both parties the name of the landlord, which is an estate, was amended so that it was consistent with the Certificate of Appointment of Estate Trustee without a Will.

### Issue(s) to be Decided

- Does the Residential Tenancy Branch have jurisdiction over this dispute?
- If so, should an order extending the time in which to file this application be made in favour of the tenant?
- If so, is the 2 Month Notice to End Tenancy for Landlord's Use valid?

### Background and Evidence

The landlord is the estate of CR, who dies intestate on June 6, 2014. Her son C was named Estate Trustee by the Ontario Superior Court of Justice on September 19, 2014. The tenant is CR's son-in-law. The tenant was married to CR's daughter C in 1990 or 1991. (The tenant could not remember when.) C died in January 2012.

C testified that he and his mother discussed her business affairs at least once a week in the years prior to her death and he is very familiar with her business. He described his mother as an active business person who bought and sold property, including income properties, throughout her life. He also described his mother as a person who preferred to do business over a handshake, rather than with formal documents. He said his mother had prepared a document two days before her death in which she listed her assets and one of them was this property.

C had mental health issues. The tenant testified that C was manic depressive and that he has been diagnosed with schizophrenia. Throughout her life CR tried to look after CI. When C lived in Ontario CR bought a property for CI to live in. When CI moved away, CR sold the property.

Both parties testified that in 1989 CI and the tenant were living together in British Columbia. CR came to British Columbia and bought this property as a place for CI to live. Not only did CR want to provide her daughter with a safe place to live but she had noticed that property values in British Columbia were rising.

The tenant testified that the purchase price was \$47,000.00 and the CR took out a mortgage in order to buy the property.

The tenant testified that CR, Carol and he had a verbal agreement that once CI and the tenant paid the full purchase price, the property would be transferred into their names. The tenant was not able to provide clear particulars about the terms of this agreement. In addition to saying that once the purchase price had been paid in full the property would be transferred he also said there was to be a down payment of \$11,000.00 paid by installments and a mortgage back to CR for the balance at a rate of 5%.

The only evidence the tenant offered in support of the existence of an agreement to purchase were some lines from CI diary and a letter from a friend that reported what CI and the tenant had told her about their arrangement with CR. The tenant was not able to provide any evidence of the payments made to CR over the years.

Title remained in CR's name and she paid always paid the property taxes; except for one year when CI and the tenant paid the taxes on CR's behalf and then deducted \$100.00 per month until the loan to CR had been repaid.

The parties both testified that the arrangement was that CI and the tenant were to pay CR monthly payments. The tenant said the agreement was for monthly payments of \$450.00; C testified that his mother always said the payments were to be \$650.00.

According to the tenant they did all the maintenance and replaced the appliances as required.

Both parties testified that CR provided substantial financial support to CI throughout her life. C said that often no rent was paid; the tenant said the rent was paid and then CI would promptly borrow the money back from her mother. The tenant said he did not have any involvement with the financial arrangements between CI and her mother. He also conceded that it was highly probable that money borrowed by CI from her mother was not repaid.

C testified that after CI died his mother was adamant that the tenant should be evicted. CR was not able to start eviction proceedings until 2014 because she was dealing with issues with another daughter and her own financial problems.

After CI died the tenant did not make any payments to CR. It was only after C was appointed trustee of CR's estate that the tenant started making sporadic payments of \$300.00 or \$350.00 per month.

In January 2015 the property was listed for sale. The landlord's evidence is that the tenant was not cooperative with the showings. The property manager also testified that the condition of the property is very poor.

On November 28, 2015 the landlord had an agent issue and serve the tenant with a 2 Month Notice to End Tenancy for Landlord's Use. Although the law only requires two month's notice the effective date of the notice was February 28, 2016.

The tenant testified that when he received the notice he went into a state of shock and depression. He felt this was a total betrayal by his in-laws. Although he completed two years of university he said he could not read the fine print on the second page of the notice. He did not know what to do. He drank heavily for a while.

After a couple of months his depression eased and he spoke to a *pro bono* lawyer. The lawyer told him he could dispute the notice at the Residential Tenancy Branch.

A couple of months later the tenant contacted the Residential Tenancy Branch. He was told he would have to file an application for dispute resolution, which he finally did on June 2, 2016.

The tenant has not paid any rent since February 28. He says he is saving the money to fix the roof.

The tenant has not taken any action in Supreme Court with regard to enforcement of the alleged agreement for sale.

In his rebuttal evidence C argued that if his mother had received full payment from CI and the tenant, or if she had intended to transfer the property to them, she would have done so at some point in the 24 years between she bought the property and when she died.

#### Analysis

*Does the Residential Tenancy Branch have jurisdiction over this dispute?*

As explained in *Residential Tenancy Policy Guideline 27: Jurisdiction*, if the relationship between the parties is that of seller and purchaser, the *Residential Tenancy Act* does not apply and the Residential Tenancy Branch does not have jurisdiction. Or, if the tenant takes an interest in the landlord and buildings which is higher than the right to possession, such as part ownership of the premises, the Residential Tenancy Branch may decline jurisdiction. However, if the tenancy agreement included a right to purchase and 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, the *Residential Tenancy Act* does apply. This is because the *Act* applies until the relationship of the parties' changes from that of landlord and tenant to seller and purchaser.

The tenant was not able to state the terms of the purported agreement; he was not able to provide any evidence that he and his late wife had complied with the terms of the purported agreement; and until this hearing he has taken no steps to enforce the purported agreement.

If there was an agreement for sale between CR, her daughter and her son-in-law it does not appear to meet any of the criteria for enforceability as set out in the *Law and Equity Act*:

- It is not in writing.
- The purported vendor did not do anything that was only consistent with the contract claimed by the tenant. CR's actions were as consistent with those of a landlord as a seller.
- The tenant has not changed his position so that the only way of avoiding an inequitable result is to enforce the alleged contract. The reality is that the tenant paid rent at the same rate for over twenty years to a landlord who did not do anything when it was not paid.

I find that there is no evidence to support the tenant's contention that a contract of purchase and sale existed. Accordingly, I find that this is a landlord/tenant relationship and the Residential Tenancy Branch has jurisdiction over this dispute.

*If so, should an order extending the time in which to file this application be made in favour of the tenant?*

Section 66(1) allows an arbitrator to extend a time limit only in exceptional circumstances. What may be and may not be considered exceptional circumstances are explained in *Residential Tenancy Policy Guideline 26: Extending a Time Period*. The *Guideline* sets out some examples of what are not considered exceptional circumstances including:

- The party who applied late for arbitration was not feeling well.
- The party did not know the applicable law or procedure.
- The party was not paying attention to the correct procedure.
- The party relied on incorrect information from a friend or relative.

Subsection (3) limits the arbitrator's discretion by setting out that the time limit cannot be extended beyond the effective date of the notice to end tenancy. The practical effect of this subsection is that if a tenant applied to dispute a notice to end tenancy after the effective date of the notice, the arbitrator has no jurisdiction to hear the matter even where the tenant can establish that there were exceptional circumstances.

The tenant's application was made months after the effective date of the notice. Accordingly, I have no option but to dismiss the tenant's application.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and:

- the notice to end tenancy complies with section 52; and,
- the application is dismissed or the notice to end tenancy is upheld;

the arbitrator must grant an order of possession of the rental unit to the landlord.

In this case the tenant's application has been dismissed and the notice to end tenancy complies with section 52, therefore, I grant the landlord an order of possession effective two days after service.

Conclusion

- a. For the reasons set out above the tenant's application is dismissed and an order of possession has been granted to the landlord. If necessary, this order may be filed in the Supreme Court and enforced as an order of that court.
- b. As the landlord was successful on its application it is entitled to reimbursement from the tenant of the \$100.00 fee it paid to file it. A monetary order in that amount is granted to the landlord. If necessary, this order may be filed in Small Claims Court and enforced as an order of that court.

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: July 14, 2016

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Residential Tenancy Branch