



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPB

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the Application) made by the Landlord on July 20, 2016 for an Order of Possession based on an alleged breach of a tenancy agreement.

An agent for the female Landlord named on the Application appeared for the hearing and explained that he was the Co-landlord named on the tenancy agreement and that he was also acting as an agent on behalf of the Landlord. Both Tenants appeared for the hearing and explained that the female Tenant's last name was incorrect and that her last name should appear as her married name. The Co-Landlord did not have any objection to this. Therefore, I amended the Landlord's Application pursuant to my authority under Section 64(3) (c) of the *Residential Tenancy Act* (the "Act") to reflect the correct last name of the female Tenant. This is also reflected in the style of cause appearing on the front page of this Decision.

The parties provided affirmed testimony during the hearing. The Tenants confirmed receipt of the Landlord's Application and the Notice of Hearing documents. The only evidence provided by the parties prior to this hearing was a copy of the residential tenancy agreement which was provided by the Landlord.

### Issue(s) to be Decided

- Does the Act have jurisdiction in this dispute?
- Is the Landlord entitled to an Order of Possession to end the tenancy?

### Background and Evidence

The Tenants testified that the Act does not have jurisdiction in this matter because the Tenants have a financial interest in the rental home. The female Tenant explained that she is the daughter of the Landlord and the Co-Landlord in this dispute. The female

Tenant testified that they could not afford to buy the rental home from their parents so they decided that their parents would become their bank and they would invest into the property and, effectively their parents would hold the mortgage for the rental home.

The female Tenant confirmed that the Tenants had signed a residential tenancy agreement on February 28, 2014. This was provided into evidence. The agreement shows that the tenancy started on March 1, 2014 and was for a fixed term of two years due to end on February 29, 2016. The agreement specifies that after the fixed term period expires the tenancy ends and the Tenants are required to vacate the rental unit. The Tenants initialed this particular term of the tenancy agreement to verify their understanding of what this term meant. Rent in the amount of \$2,150.00 is payable by the Tenants on the first day of each month. No security deposit was requested for this tenancy. The tenancy agreement requires the Tenants to pay for heat and electricity.

The female Tenant confirmed that after they had signed the above agreement, minutes later they entered into a verbal agreement with the Landlords that the tenancy agreement would continue to be renewed until such time the Tenants were able to come up with sufficient funds to purchase the property. The female Tenant testified that when this time would come, the tenancy agreement would be voided and the Tenants would become the owners of the rental home. The female Tenant confirmed that the rental amount being paid under the tenancy agreement was going directly into the Landlord's bank account and that no receipts were issued for these payments. The Tenant confirmed that there were no rental arrears but that the payments were, according to the Tenants, being made towards the purchase price of the house. The Tenant testified that the agreement between the parties was that the rent monies would be deducted from the purchase price of the rental home when they were in a position to buy it.

The female Tenant testified that the rental amount they were paying was not rent but that this amount was calculated by the parties to reflect an interest payment they would be making on the rental home had they purchased it and were paying a mortgage on it. The Tenant testified that this rent amount also included property taxes.

The Co-Landlord disputed the female Tenant's evidence and stated that before the tenancy was entered into the male Tenant had indicated to him that they wanted to purchase the property from him based on money he was about to receive from his employer. However, that employer arrangement did not work out so the Landlord offered to rent the home out to the Tenants until such time they could come up with the monies to purchase it.

The Co-Landlord vehemently disputed that the rent paid by the Tenants was being put towards the purchase of the home and stated that the Tenants were lying in this respect. The Co-Landlord stated that the male Tenant wanted him to put the rental home into the female Tenant's name. However, the Co-Landlord did not want to do this and asserted in the hearing that this was the reason why they signed a residential tenancy agreement. The Co-Landlord testified that the tenancy agreement was signed to ensure there was to be no confusion that the money was being paid for rent purposes only, and that this rent money was not going to be returned to the Tenants in any way or deducted from any purchase price of the home. The Landlord testified that he was renting the rental home to the Tenants as a way to hold onto the property in the hope that they would be able to get themselves in a financial position to purchase it as they were often moving from place to place.

The Tenants confirmed that they had continued to pay full rent to the Landlord's bank account after the fixed term ended on February 29, 2016, which at the time of this hearing totalled seven months. The Landlord confirmed that he had not provided any documentation to the Tenants that they had breached the tenancy agreement and were now over holding the tenancy. However, the Landlord testified that he continually asked the Tenants to move out of the rental unit pursuant to the agreement and was providing them with extensions to accommodate their situation.

The female Tenant testified that the Landlord (her mother) made no mention of not wanting to accept the monies paid after February 29, 2016 or that she wanted to end the tenancy. The female Tenant testified that the Landlord had not appeared for this hearing because the Co-Landlord was controlling and that the Landlord feared the Co-Landlord and was just doing what he told her. The female Tenant confirmed that since February 29, 2016 they had not received any documentation or receipts from the Landlord indicating that they wanted to end the tenancy or that they were continuing to accept rent for occupancy of the rental unit. The Co-Landlord responded stating that the Tenants were paying money directly into a bank account and that he was not aware that this was happening as he was away for several months after the fixed term had ended.

### Analysis

The Tenants raised the issue of jurisdiction in this matter. Therefore, I must first turn my mind to this issue before I am able to make legal findings in this case. As a result, I turn to Policy Guideline 27 on Jurisdiction, in particular, section 5 titled Transfer of an Ownership Interest. This section states:

*"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.]

Based on the foregoing, I make the following findings based on the parties' oral testimony and the copy of the tenancy agreement provided into evidence. I find that the parties failed to provide sufficient evidence to show that prior to the signing of the residential tenancy agreement, there existed a buyer and seller relationship. While I agree that there may have been a discussion around the potential purchase of the rental home by the Tenants, I find that no such agreement or contract was ratified in writing or otherwise that would support the assertion made by the Tenants.

The parties disputed each other's testimony regarding how the rental money paid for this tenancy was to be used. I find that there is insufficient evidence before me to suggest that the rent money was being provided to the Landlords for the purchase of the property. Rather, I find that the existence of a residential tenancy agreement, which was put in writing and signed by the Tenants, supports the Co-Landlords assertion that this was a landlord and tenancy relationship and the agreement did not form part of a purchase of the rental home. Neither, do I find that the Tenants took an interest in the property that could be found to be higher than the right to occupy it.

I find the tenancy agreement, which is the only documentary evidence before me, is sufficient for me to conclude that the parties engaged into a tenancy agreement for this tenancy and that this tenancy agreement was to take effect until such time the parties both decided that the tenancy should be ended and the process of purchasing the rental home would start. Therefore, I find that the Act does have jurisdiction in this matter. As a result, I continue to make findings on the Landlord's Application as follows.

Section 44(1) of the Act provides ways in which a tenancy may end. Section 44(1) (b) of the Act stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. In this case, I find the parties entered into a tenancy agreement which required the Tenants to vacate the rental home on February 29, 2016.

However, I cannot ignore the fact that since this time the Landlord has accepted rent from the Tenants for this tenancy without putting them on sufficient notice that the tenancy agreement had ended and that the Tenants were being allowed to stay in the rental unit for use and occupancy only. I also cannot ignore the fact that since the ending of the fixed term tenancy on February 29, 2016, five months had passed before the Landlord made the Application on July 20, 2016 to claim that the tenancy had been breached by the Tenants. In this respect I turn to Policy Guideline 11 on Amendment and Withdrawal of Notices. This guideline states in part:

*"If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:*

- whether the receipt shows the money was received for use and occupation only.*
- whether the landlord specifically informed the tenant that the money would be for use and occupation only, and*
- the conduct of the parties.*

*There are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights. Implied waiver can also arise where the conduct of a party is inconsistent with any other honest intention than an intention of waiver, provided that the other party concerned has been induced by such conduct to act upon the belief that there has been a waiver, and has changed his or her position to his or her detriment. To show implied waiver of a legal right, there must be a clear, unequivocal and decisive act of the party showing such purpose, or acts amount to an estoppel."*

[Reproduced as written]

Based on the foregoing, I find that I am only able to make findings on this issue based on the disputed oral evidence of the parties. I find that after the fixed term tenancy ended on February 29, 2016, there is insufficient evidence before me that the Landlord or the Co-Landlord informed or put the Tenants on notice that the tenancy had ended. Instead, the evidence before me shows that the Landlord continued to accept rent from the Tenants several months after the fixed term had ended and did not make efforts to end the tenancy through dispute resolution until they filed their Application on July 20, 2016. I find that this delay is significant to suggest that the tenancy was re-instated as it continued after the fixed term ended. Therefore, based on the evidence before me, I am unable to grant the Landlord's Application for an Order of Possession. Section 44(3) of the Act states that in a fixed term tenancy that does not require the tenant to vacate the rental unit, the parties are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms. Therefore, I further find that this tenancy continued on a month to month basis after February 29, 2016 under the same terms of the agreement and will continue to do so until the tenancy is ended pursuant to the Act.

#### Conclusion

I find the Act has jurisdiction in this matter. The Landlord's Application for an Order of Possession is denied. The tenancy will continue until such time it is ended in accordance with 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 Act.

Dated: September 08, 2016

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Residential Tenancy Branch