



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MDSD & FF

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$4950 for unpaid rent
- c. An order to recover the cost of the filing fee

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order cancelling a 10 day Notice to End Tenancy
- b. An order cancelling an additional rent increase that does not comply with the Act.
- c. A monetary order in the sum of \$5040 to recover a rent increase not permitted by the Act
- d. An order suspending or setting conditions on the landlord's right to enter the rental unit.
- e. An order that the tenant recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

L acknowledged receipt of the Application for Dispute Resolution/Notice of Hearing and Amended Application for Dispute Resolution filed by the Tenant. There was a dispute as to whether the Application for Dispute Resolution/Notice of Hearing filed by the L was sufficiently served on the N. N testified he was not able to find that document but he does not dispute that it was served on him.

Preliminary Issue to be Decided

The preliminary issue to be decided is whether the Residential Tenancy Branch has jurisdiction to hear this matter?

Background and Evidence

N has rented the rental unit since April 1998. The parties were friends. In 2014 L purchased the rental property from the previous registered owner.

N, tenant/prospective purchaser entered into an agreement with L, landlord/owner of the rental property dated November 1, 2014 that contained the following terms:

- It was entitled a Contract of Purchase and Sale.
- N was to continue to reside in the rental unit after L purchased the property.
- N shall pay rent to L in the sum of \$1600 per month commencing on November 1, 2014 and ending on October 31, 2016.
- L shall allocate 15% or \$240 of the sum paid per month to a down-payment for the purchase of the property.
- At the expiration of 2 years namely October 31, 2016 N shall, at his option, enter into a contract for purchase and sale with L for the purchase of the rental property for a purchase price to be agreed upon by the parties at "fair market value."
- The amount allocated towards the down-payment shall be credited to N as a deposit on the purchase of the premises.
- At the expiration of the term should N not chose to entered into the contract for the purchase and sale as provided herein, N agrees that the \$5760 shall be forfeited to L and a new rental agreement shall be entered into between N and L.
- This agreement is not assignable.

N has been late on the monthly payments for all but two of the months covered to date under the agreement. N has paid all but \$450 of the payment for September. The remainder of the payments have been made.

N testified he has been late because his customers have failed to pay him in a timely manner. However, he has now secured permanent work which will alleviate that problem. L testified the tardiness in the late payments has caused him financial difficulties.

N testified he paid a security deposit of \$800 or \$1600 but was not certain as to the amount.

Policy Guideline #27 includes the following:

“5. TRANSFER OF AN OWNERSHIP INTEREST

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 (my emphasis).**

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.”

Analysis

After carefully considering all of the evidence I determined that the essence of this agreement is a contract for purchase and sale and not a tenancy agreement for the following reasons:

- Fifteen (15%) per cent of the monthly payments were to be allocated to the down-payment for the purchase of the property by N
- The contract provides in the preamble that L agrees to sell the property to N.
- Should N chose to exercise his right to purchase the premises, the 15% shall be credited as a deposit on the purchase of the premises. If he does not chose to exercise this right it is forfeited to L..

These terms are more consistent with an interest to purchase the premises rather than a tenancy agreement.

As a result I determined that the Residential Tenancy Branch does not have jurisdiction and I declined to hear the matter.

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: September 08, 2016

Residential Tenancy Branch