



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR OPR MNSD FF

Introduction

This hearing dealt with applications by both parties for monetary orders. Both parties attended the hearing and had an opportunity to be heard.

The hearing of this matter commenced and after much of the evidence had been heard the issue of jurisdiction came up.

The landlord explained that the intent had never been to just rent the residential property to the tenants but rather to sell it to them. This intent was contained in Sections 35 and 61-66 of the "Residential Lease Agreement" between the parties dated January 1, 2015. Pursuant to this Agreement, it was agreed that the purchase price of the residential property was \$329,000.00 and that the monthly rent of \$1450.00 would go toward the purchase price of the property if the tenants exercised their option to purchase.

In considering whether this Residential Lease Agreement falls under the jurisdiction of the Residential Tenancy Act, I refer to Residential Tenancy Policy Guideline No. 27 which provides as follows:

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.**

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. ***{Emphasis added}***.

I am satisfied based on the testimony of both parties and the written agreement between them that this was a transfer of an ownership interest rather than a landlord and tenant relationship.

Accordingly, I find that the Act does not apply to this situation.

Conclusion

The applications of both parties are dismissed for lack of jurisdiction.

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: October 17, 2016

Residential Tenancy Branch