



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0917814 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenants – MNSD, FF

For the landlords – MNR, MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied for a Monetary Order to recover double the security deposit and to recover the filing fee from the landlords for the cost of this application. The landlords applied for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application.

Jurisdictional Issues

On examination of the documentary evidence provided from both parties, I focused my attention to a document titled "Contract of Purchase and sale addendum". This document states, in part, that this is further to the contract of purchase and sale dated March 08, 2014 between [tenants and landlords names entered here].

The buyer is to occupy/rent the home starting April 01, 2014 till the completion date and agrees to pay a rental amount of \$1,750.00 month as rent until completion date set out in the contract. Buyer will be proving a nonrefundable deposit of \$6,000.00 upon move which will be held by the owner and released to the buyer upon completion. If the buyer is unable to complete on the sale of the home the deposit will be kept by the owner.

The rent to own program is as follows:

Three months: 100% of rental amount put towards down payment

Six months: 60% of rental amount put down towards down payment

One year: 25% of rental amount put down towards down payment.

After one year period there will be no return of rent towards down payment but the initial deposit held by the owner will be used towards down payment on the completion date set out in the contract by the owner/occupant once they are ready to complete on the sale of the home. If this deadline is not met the deposit will be kept by owner/seller and the owner has the right to give the occupants 30 days' notice to move out.

The offer to purchase and agreement of sale has also been provided in documentary evidence and signed by both parties on March 04, 2014 for a tenancy due to commence on April 01, 2014. The purchase agreement was however signed on March 18, 2014 which resulted in this relationship becoming that of seller and purchaser.

Analysis

I find the parties have a Rental Purchase Agreement in place for the home. I therefore refer the parties to the Residential Tenancy Policy Guideline # 27 which provides guidance in the matter of jurisdiction that Arbitrators have under the Act. Section 5 of this guideline provides guidance on agreements with a right to purchase and states the following:

"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]

I have considered the above provisions of the policy guideline along with the oral and written evidence of the applicant and respondent and I find that as this tenancy involves a purchase agreement which may or may not still be in force at the time the applications were made; where part of the rent was intended to be applied to the total purchase price of then the relationship between the parties is that of seller and purchaser of real estate and not that of landlord and tenant, even though an initially tenancy agreement was signed by the parties. I therefore find that the Legislation does not apply to this matter and I decline jurisdiction. The parties are at liberty to seek alternative legal remedies to address their dispute.

Conclusion

For the reasons set out above, I decline jurisdiction in this matter and I dismiss both applications **without** leave to re-apply, pursuant to Section 62(4)(b) of 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 *Residential Tenancy Act*.

Dated: January 25, 2017

Residential Tenancy Branch