



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, CNR, RR, OLC, FF

This hearing was scheduled in response to applications by the landlord and the tenant. The landlord applied for an order of possession, for unpaid rent and the filing fee. The tenant applied to cancel the notice to end tenancy and for other remedies. Both parties were represented by their agents.

This hearing was originally scheduled for December 29, 2016 and was adjourned to be conducted on March 08, 2017. The parties attended the hearing and the matter was adjourned for a second time to be heard on this date April 11, 2017. Interim decisions were issued after the hearings on December 29, 2016 and March 08, 2017.

Issues to be decided

Does the *Residential Tenancy Act* apply to the parties? Is this dispute substantially linked to a matter that is before the Supreme Court?

Background and Evidence

The parties entered into a lease agreement on December 11, 2012 with an option to purchase. The tenant moved into the rental unit on January 01, 2013. The agreement required the tenant to pay a non-refundable deposit of \$10,000.00 which would be deducted from the purchase price of \$475,000. The tenant was required allowed to make improvements to the property and was granted a discounted rent of \$600.00.

The agreement stated that at the end of the fixed term, if the tenant had not exercised the option to purchase, the lease would be re-negotiated. The three year term ended in January 2016. The tenant had not exercised the option and the lease was not re-negotiated.

The tenant stated that at the start of the term he paid the landlord the required deposit of \$10,000.00 by cheque. The landlord stated that he had not yet cashed the cheque. The landlord also stated that the tenant had not paid any rent and the tenant argued that he had provided the landlord with a void cheque to obtain automatic payments from his bank account. On January 09, 2017, the tenant filed a copy of his notice of civil claim dated December 14, 2016, against the landlord with regard to this rental unit. The landlord testified that on April 05, 2017 he filed a response to the tenant's civil claim and filed a counter claim.

Analysis

Residential Tenancy Policy Guideline 27 addresses jurisdictional matters. This guideline states that 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 *Act*. 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. In this case, the lease agreement clearly states that the tenant was required to pay a non-refundable deposit that would be applied to the purchase price when the option to purchase was exercised. Accordingly the *Residential Tenancy Act* does not apply.

In addition, section 58.2.c of *Residential Tenancy Act* also addresses the jurisdiction of the *Residential Tenancy Act*. This section states that if a dispute is linked substantially to a Supreme Court action, then the arbitrator may decline jurisdiction.

The landlord strongly voiced his position that this matter did fall under the jurisdiction of the *Residential Tenancy Act*.

Based on the sworn testimony of both parties and the documentary evidence filed by both parties, I find that the parties were in a lease agreement with an option to purchase and the tenant was required to pay a deposit which would be applied to the purchase price when he exercised the option. I further find that this dispute is linked substantially to a matter that is before the Supreme Court of BC. Therefore I find that I do not have jurisdiction in this matter.

Conclusion

The applications of both parties are dismissed.

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: March 08, 2017

Residential Tenancy Branch