



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the two month Notice to End Tenancy dated May 29, 2017
- b. An order to 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.

I find that the Notice to End Tenancy was served on the applicant by serving an adult person who apparently resides in the rental unit with the applicant on May 29, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the respondent by mailing by registered mail it to where the respondent apparently resides on June 14, 2017. It is also the address for service on the respondent contained in an Agreement for Transfer of Property.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated May 29, 2017?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The applicant and the respondent are siblings. The respondent testified he has been a part owner of the property with his mother since around 1983. He lived in the property from 1983 to 2004. At that time his mother passed away. His mother transferred one half of her interest in the property to the respondent and the other half to the applicant. As a result the respondent had a 75/100 interest and the applicant had a 25/100 interest.

The property was rented out for a number of years. In 2015 the applicant and the respondent entered into an agreement in which the applicant transferred his 25/100 interest to the respondent. The agreement also contained the following clause:

“2. Terms of the Transfer – In consideration of the Transferor transferring the interest in the Property to the Transferee, the Transferee will:

....

(c) permit the Transferor to rent the Property for SIX HUNDRED DOLLARS per month, for as long as the Transferor may be so inclined, provided that if the Transferor chooses to rent the Property from the Transferee, the Transferor shall pay any and all utilities for the Property, including, without limitation, gas, water, sewer, garbage, electricity, telephone, cable and internet, for the duration of time that the Transferor is renting the Property;

There is a dispute between the applicant and the respondent as to whether the applicant has received fair value for this transfer.

Grounds for Termination:

Neither party provided a copy of the 2 month Notice to End Tenancy. However, the parties testified the grounds in the Notice to End Tenancy are as follows:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse
- ...
- The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant

Jurisdiction:

The first issue to determine is whether this is a matter that can be determined by proceedings under the Residential Tenancy Act.

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.

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 and the submissions of the parties I determined that I do not have jurisdiction to consider this matter. The dispute relates to the rights and obligations under an agreement for the transfer of an interest in real property. It appears on the face of the agreement that one of the rights the applicant was given in exchange for the transfer of his interest in the property is the right to rent the property at \$600 per month for so long as he is inclined to do so. The parties disagree as to whether the applicant was properly compensated for the transfer.

I determined this is a matter that should be determined by the Supreme Court of British Columbia and that it is not a residential tenancy matter. As a result I declined to hear the application for lack of jurisdiction.

This decision is final and binding on the parties.

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: August 14, 2017

Residential Tenancy Branch