



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      RP ERP OLC PSF FF

### Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the “Act”) for:

- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide testimony, present evidence and make submissions on the preliminary matter of jurisdiction.

### Issues

Do I have jurisdiction under the Act to make a decision on the application before me?

### Background and Evidence

The parties entered into a contract of purchase and sale for the property in question on July 15, 2015 with a completion date of December 1, 2017. The applicant took possession of the property on August 1, 2015. The contract required a \$15000.00 deposit which was paid upon the acceptance of the agreement and then monthly payments of blended principal and interest of \$1300.00 per month. The balance is to be paid upon the competition date.

The respondent submits there is a contract of sale and purchase and as such there was a transfer of ownership and not a tenancy agreement.

The tenants acknowledge there was a rent to buy agreement by which they paid rent in addition to principal. The tenants submit the payments were always referred to as “rent” and as such they believe they were in a tenancy agreement.

### Analysis

Before making any finding on the merits of the claim, I must determine if I have jurisdiction under the Act to make a decision on the application before me.

A tenancy agreement is defined under section 1 of the Act as follows:

**"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

*Residential Tenancy Policy Guideline #27 “**Jurisdiction**”* provides the following guidance on page 27-4:

#### 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.

I find the parties entered into a contract of purchase and sale and not a tenancy agreement as defined under the Act. As per the contract, the monies that exchanged hands formed part of the purchase price of the property. The tenant has an interest in the property which is higher than the basic right to possession under a tenancy agreement.

Therefore, I find that the Act does not apply and I do not have the jurisdiction to make findings on the remedies requested by the Applicant.

### Conclusion

I find that I do not have jurisdiction over this 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 06, 2017

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Residential Tenancy Branch