



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, RR, O

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Applicant under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”). The Applicant also applied to dispute a rent increase that does not comply with an increase permitted by the Regulation, and sought an Order for the Respondent to reduce the rent for repairs, services or facilities, agreed upon but not provided, and other unspecified remedies.

The hearing was convened by telephone conference call and was attended by the agent for the Respondent (the “Agent”) and the Applicant, both of whom provided affirmed testimony. Although the Agent testified that the Respondent was not properly served with the Notice of Hearing or the Application, ultimately I found that the Respondent was aware of the date and time of the hearing as their Agent attended at the appointed time, ready to proceed. As a result, I proceeded with the hearing and both parties were given the opportunity to make submissions and to present their evidence orally and in written and documentary form.

The documentary evidence submitted by the Respondent was received late by the Branch on October 30, 2017, one day prior to the date of the hearing. As the evidence was not served on the Applicant and sent to the Branch in accordance with Act and the Rules of Procedure, and the Tenant did not have sufficient time to consider or respond to it, the evidence was excluded from consideration in the hearing. However, the parties were advised that I would permit oral testimony regarding the documents for consideration in the hearing, should it be necessary.

At the outset of the hearing the Agent stated that the Respondent is not a Landlord and that a 10 Day Notice was not issued. The Agent testified that the Applicant entered into a verbal agreement with the Respondent in February, 2017, whereby the parties agreed that the Tenant could move into the house and pay \$500.00 a month towards the purchase price of the home.

The Applicant testified that although there was a discussion regarding the purchase of the home, the agreement was for the Applicant to pay \$500.00 a month in rent from

April 1, 2017, until the spring of 2018, at which time they were to put a new roof on the home in lieu of a down payment and purchase the home from the Respondent for \$100,000.00. The Applicant also testified that since moving into the property, they have purchased over \$400.00 worth of roofing supplies for the house. In support of their testimony the Applicant submitted a tenancy agreement and a condition inspection report, neither of which were signed by the Respondent, and the Applicant testified that they prepared these documents themselves. No other documentary evidence was submitted in support of the Application or the Applicant's testimony and all parties agreed that there was no written agreement in place.

Based on the above, I find that I must determine whether I have the jurisdiction to hear this matter under the *Act* prior to considering the merits of the Application. Section 1 of the *Act* defines a tenancy agreement as 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. However, Policy Guideline # 27 states that if the relationship between the parties is that of a seller and a 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*.

Based on the above, and in consideration of the Agent's testimony that any money paid by the Applicant is being paid towards an ownership interest in the property, I find that I do not have the jurisdiction to hear this matter. The Applicant *may* have an ownership interest in the property, however, only the BC Supreme Court has the jurisdiction to decide matters in relation to an ownership interest in property. I therefore decline to hear this matter for lack of jurisdiction and I encourage the parties to seek independent legal advice in relation to 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*. At the request of the parties, copies of this decision will be sent via e-mail at the addresses they provided in the hearing.

Dated: November 1, 2017

Residential Tenancy Branch