



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM – DR, FFL, MNR

Introduction

This hearing dealt with the applicants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The respondent acknowledged receipt of evidence submitted by the applicant. The respondent did not submit any documentary evidence for this hearing.

Preliminary Issue – Jurisdiction

At the outset of the hearing, the issue of jurisdiction was raised. Both parties agreed that this was a rent to own agreement. The applicant testified that since she used the "10 Day Notice to End Tenancy" form, the matter fell under the jurisdiction of the Residential Tenancy Branch. The applicant also testified that she felt that the rental agreement is separate from the rent to own and that they could run concurrently. After reviewing the applicants' documentation I find that the applicants' documentation clearly reflects one of a Vendor and Purchaser. The documentation refers to the parties as such along with landlord tenant. The respondent was required to pay a \$17500.00 down payment for the purchase of the property from the outset of the arrangement. Also, \$1000.00 of the monthly payment of \$4000.00 was to be applied to the total sale price. Furthermore, an additional payment of \$10000.00 per month is to be paid by the respondents towards

the outstanding purchase price. I find that all of these conditions are not standard rental conditions as noted in section 13 of the Act. Both parties agreed that the agreement is primarily a sale of a property from the applicant to the respondent. Residential Tenancy Policy Guideline 27 addresses the issue before me as follows:

"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".

I find that the applicant attempted to "straddle" both a contract for sale and a tenancy agreement to her benefit and where it would suit her needs. I find that this is not a landlord tenant relationship.

In light of the above, it is my determination that the Applicant and Respondent have no rights or obligations to each other under the *Residential Tenancy Act* and therefore I do not have jurisdiction to resolve a dispute between the parties.

Conclusion

I HEREBY DECLINED TO HEAR this matter, for want of jurisdiction and the application is dismissed, without leave to reapply.

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: February 19, 2018

Residential Tenancy Branch