



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

CNR

### Introduction

This hearing was scheduled for 11:00 a.m. on today's date, via teleconference call, to deal with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. The applicant and his spouse appeared at the hearing; however, there was no appearance on part of the respondent.

Since there was no appearance on part of the respondent, I explored service of hearing documents upon the respondent. The applicant testified that the hearing documents were sent to the respondent via registered mail on May 19, 2018. A search of the tracking number showed that the respondent picked up the registered mail on May 25, 2018. I was satisfied the respondent was notified of this proceeding and I continued to hear from the applicant without the respondent present.

The teleconference call remained open until 11:14 a.m. and during that time the respondent did not appear.

### Preliminary Issue – Jurisdiction

The applicant submitted to me that there is no tenancy agreement between the parties. Rather, the applicant was provided possession of the subject property under a Contract of Purchase and Sale ("CPS") in early December 2017. A CPS was uploaded as evidence. Upon review of the CPS I noted that it appears to be signed by the seller but not the buyer. The applicant's spouse explained they have multiple copies of a CPS and she must have uploaded the copy not signed by the buyer. The applicant affirmed that he did sign a copy of the CPS.

The CPS before me indicates the applicant was to pay a deposit of \$1,500.00 by way of two partial payments: \$1,000.00 on December 6, 2017 and another payment of \$500.00 on January 1, 2018 with completion and the balance of the \$95,000 purchase price to occur on February 28, 2018. The applicant testified that he made the \$1,000.00 deposit payment but the \$500.00 payment was satisfied by the applicant replacing the hot water tank. The applicant stated the respondent gave him verbal agreement that the replacement of the hot water tank would satisfy

the \$500.00 deposit payment even though this would appear to contradict term number 7 of the CPS. I heard that no other payments were made to the respondent and the applicant continues to reside at the subject property.

The applicant testified that prior to February 28, 2018 his lawyer attempted to communicate with the respondent to get paperwork in order to complete the purchase; however, the respondent did not pick up the registered mail and the transfer of title has not taken place. The applicant testified that prior to February 28, 2018 the respondent told the applicant she wanted to cancel the CPS and enter into a tenancy agreement with him; however, the applicant was not agreeable to entering into a tenancy agreement unless certain repairs were made. The applicant stated the repairs have not been made and there is no tenancy agreement between the parties.

On May 11, 2018 the respondent served the applicant with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") indicating rent of \$2,000.00 was outstanding as of May 1, 2018. The 10 Day Notice indicates that \$2,000.00 is the sum of \$500.00 for the four months of February 2018 through May 2018.

Residential Tenancy Branch Policy Guideline 27: *Jurisdiction* provides information and policy statements concerning certain living accommodation that may or may not fall under the *Residential Tenancy Act*. Under the heading "Transferring Ownership" the policy guideline provides:

## **2. TRANSFERRING OWNERSHIP**

A tenancy agreement transfers a landlord's possessory rights to a tenant. It does not transfer an ownership interest. If a dispute is over the transfer of ownership, the director does not have jurisdiction. In deciding whether an agreement transfers an ownership interest, an arbitrator may consider whether:

- money exchanged was rent or was applied to a purchase price;
- the agreement transferred an interest higher than the right to possession;
- there was a right to purchase in a tenancy agreement and whether it was exercised.

It would appear to me that the CPS has expired and I informed the applicant that its enforceability may be questionable but that would be an issue to resolve in the appropriate forum as I do not have jurisdiction to resolve disputes involving transfer of ownership. However, based on the unopposed submissions from the applicant, I find I am also unsatisfied that the parties had a meeting of the minds with respect to formation of a tenancy agreement.

My jurisdiction is limited to tenancy agreements between a landlord and a tenant with respect to a tenant's right to possession of a rental unit. A tenancy agreement is defined in section 1 of the Act to include oral or implied agreements between a landlord and a tenant with respect to

possession of a rental unit and licenses to occupy; however, I was not presented sufficient evidence to suggest the parties entered into any form of a tenancy agreement. Therefore, I decline jurisdiction to resolve the dispute between parties.

#### Enforceability of the 10 Day Notice to End Tenancy for Unpaid Rent

Where a notice to end tenancy issued by a landlord comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the notice. I find this burden has not been met in the absence of evidence from the respondent that there is a tenancy agreement between the parties or the terms of tenancy. Therefore, I am unsatisfied the 10 Day Notice before me is valid and enforceable under the Act and I do not issue an Order of Possession.

#### Conclusion

I have declined to accept jurisdiction as I am unsatisfied the parties have a tenancy agreement to which the Act applies. I am unsatisfied the 10 Day Notice before me is valid and enforceable under the Act and I do not issue an Order of Possession.

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: July 11, 2018

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Residential Tenancy Branch