



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR FFT MNDCT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (“Ten-Day Notice”) pursuant to section 46(4);
- A monetary order for damage or compensation pursuant to section 67; and
- An order for reimbursement of the filing fee pursuant to section 72.

The landlord’s counsel KS appeared for the landlord (“the landlord”). The tenant appeared. Both parties were given the opportunity to make submissions as well as present affirmed oral and written evidence.

The landlord acknowledged receipt of the tenant’s Notice of Hearing and Application for Dispute Resolution. I find the landlord was served in accordance with section 89 of the *Act*.

Preliminary Issue – Jurisdiction

At the outset of this hearing, I explained to the parties that I had concerns centering on my jurisdiction to hear this matter.

Following some preliminary information regarding the nature of the property, the parties explained that each party claimed an ownership interest in the property currently in dispute. The respondent claimed the ownership interest of the applicant ended and the relationship changed, or returned, to one of landlord-tenant. The applicant claims an ownership interest in the property under a “rent to own” agreement.

The applicant provided evidence to the hearing as part of his evidentiary package that the home is the subject of a document prepared in the Residential Tenancy Branch standard form entitled "Residential Tenancy Agreement" dated March 1, 2017 and signed by both parties, a copy of the first two pages of which were submitted.

The document includes uninitialed hand written insertions. The material hand written portions in sections 2 and 3 are:

2. Rent to own, purchase price \$110.00.00

3. [rent stated as \$1,000.00]

\$500.00 towards principal, \$500.00 rent, \$110.000 PP

The parties agree the intention of the parties was that the applicant would buy the property although no date for the sale is included in the agreement. However, the applicant testified that when he experienced difficulties in obtaining financing in May 2018, the respondent told him the agreement of purchase and sale was over and the applicant was now a tenant. The applicant then stopped paying the respondent who issued a Ten-Day Notice which parties agree was personally served on August 7 or 8, 2018.

A copy of the Ten-Day Notice was submitted in evidence. The Notice is not signed and does not include an effective date.

The applicant applied on August 14, 2018 for an order cancelling the Ten-Day Notice and for reimbursement for improvements that he made to the property in the amount of \$6,500.00.

Section 2(1) of the *Residential Tenancy Act* states:

This Act applies to tenancy agreements, rental units and other residential property.

A *tenancy agreement* is defined in section 1 of the *Act*, as follows:

*"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."*

Evidence submitted at the hearing shows that the intention of the parties was that the applicant would have an ownership stake in the property beginning with the signing of the agreement on March 1, 2017. At the hearing, the respondent acknowledged that applicant had an ownership interest in the property.

A landlord is defined in section 1 of the *Act* as, “the owner of the rental unit.”

As **both parties currently have an ownership interest**, there is no landlord/tenant relationship and I have no jurisdiction to consider this matter. A tenancy agreement is only formed when a landlord and a tenant as defined by the *Act* enter into an agreement.

The applicants must bear the cost of their own filing fee, as the *Act* does not apply, and I therefore have no authority or recourse under the *Act* to return the filing fee.

Conclusion

I decline to rule on this matter as I have no jurisdiction to consider this application

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: October 03, 2018

Residential Tenancy Branch