



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding P G S VENTURES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent and to recover the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Preliminary and procedural matters

This matter commenced on November 22, 2018. The matter was adjourned for the tenant to submitted evidence. The interim decision should be read in conjunction with this decision.

The interim decision reads in part,

The Tenant must serve the document referred to above as soon as possible to the Landlord and the RTB no later than two (2) days after receipt of this Interim Decision.

[Reproduced as written]

In this case, the respondent filed their evidence with the Residential Tenancy Branch on January 6, 2019, three (3) days before the hearing. The respondent did not provide a copy of their evidence to the applicant. The applicant objected to the evidence being reviewed as they did not receive it.

I find the respondent has failed to comply with the interim decision. The applicant was not served a copy of the evidence. Therefore, I have excluded all evidence submitted by the respondent on January 6, 2019.

Before proceeding to examine and consider the merits of the landlord's application, I must determine whether this application has jurisdiction under the *Residential Tenancy Act*.

The respondent testified that they had a verbal agreement with the owner of the property to purchase the property. The respondent stated that they would pay the amount of \$1,000.00 per month towards the mortgage and expenses.

The respondent testified that they do not have the ability to purchase the property and the property was to be held, in trust for them.

The advocate stated that the respondent had a 5 years agreement with the owner and at the end of that agreement the respondent would get his own financing.

The advocate stated that the respondent has never signed an agreement to rent.

The applicant testified that they inherited the property from their father when he passed away. The applicant stated there is no evidence that their father entered into an agreement for the tenant to purchase the property.

The applicant testified that the respondent originally owned the property and their father bought the property as a foreclosure. Filed in evidence are foreclosure documents from the Supreme Court. Filed in evidence is a copy of the landlord title document.

The Supreme Court Order Made After Application Order Approving Sale, reads in part,

“ 2. ... subject to the terms of this Order, the Lands be conveyed to an vest in the Purchaser, ... , in fee simple, free and clear of any estate, title, interest, equity or redemption and other claims of the parties ..”

[Reproduced as written.]

The applicant testified that the general ledger shows that the amount their father purchased the property for \$151,000.00, which is consistent with the Supreme Court Order. In addition, when the respondent started to pay rent in the amount of \$1,000.00

after the property was foreclosed on in 2015. Filed in evidence are ledger reports, showing rent.

The applicant testified that they gave the respondent the option to purchase the property; however, the respondent did not return the purchase agreement.

### **Unregistered instrument does not pass estate**

**20** (1) Except as against the person making it, an instrument purporting to transfer, charge, deal with or affect land or an estate or interest in land does not operate to pass an estate or interest, either at law or in equity, in the land **unless the instrument is registered in compliance with this Act.**

In this case, I am not satisfied that the respondent has any interest in the property greater than that of a tenant. The respondent was the owner of the property; however, that property was foreclosed in September 2015 and was purchased by the applicant.

I find the respondent has provided no documentary evidence to support that they have any legal interest in the property as required by section 20 of the land title Act, as any interest in the equity of land, must be registered.

Further, the respondent was offered to purchase the property in 2018, and did not do so because they do not qualify for a mortgage.

**"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.

Although I accept there is no written tenancy agreement. Under the Residential Tenancy Act definitions at tenancy agreement can be oral, express, or implied.

Based on the above, I find the applicant is a landlord and the respondent is a tenant and the Residential Tenancy Act applies to this matter.

### **Issues to be Decided**

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order?

### Background and Evidence

Based on the testimony of the parties, I find that the tenant was served with a notice to end tenancy for non-payment of rent issued on August 9, 2018, by registered mail which was received on August 13, 2018. The notice informed the tenant that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice.

The tenant testified that they did not dispute the notice to end tenancy and they have not paid any money from October 2017, to today's date, January 10, 2019.

### Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

The tenant has not paid the outstanding rent and did not apply to dispute the notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. I find the tenancy legally ended on August 31, 2018 and the tenant is overholding the premises.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I find that the landlord has established a total monetary claim of \$15,000.00 comprised of unpaid rent from October 2018 to January 2019, and the \$100.00 fee paid by the landlord for this application. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The Residential Tenancy Act applies.

The tenant failed to pay rent and did not file to dispute the notice to end tenancy. The tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession, and a monetary order for unpaid rent.

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: January 11, 2019

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Residential Tenancy Branch