



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPL CNL MNDCT FFT

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for landlords’ own use pursuant to section 55.

The tenant requested:

- cancellation of the landlords’ 2 Month Notice to End Tenancy for landlord’s own use (the 2 Month Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The tenant attended the hearing with his advocate MG in this hearing. 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.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenant were duly served with the Applications and evidence.

As the tenant confirmed receipt of the 2 Month Notice on November 29, 2018, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Preliminary Issue—Amendment to Tenant’s Application

The tenant served the landlords with an amendment to his monetary application on February 11, 2019. The landlords testified that they did not receive the amendment, which was mailed to them, until February 15, 2019.

Rule 4.6 states the following:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence must be received by the by the respondent(s) not less than 14 days before the hearing.

It was undisputed that the tenant did not mail the amendment to the landlords until February 11, 2019. In accordance with section 90 of the *Act*, the package is deemed to be served 5 days after mailing. The landlords testified that the package was received on February 15, 2019, less than 14 days before the hearing. The landlords testified in the hearing that he did not have the opportunity to review or respond to the amendment.

As this amendment was not received in accordance with RTB Rule 4.6, and the respondents have the right to review and respond to the amendment and supporting evidence, the package will be excluded and not considered as part of this application.

Preliminary Matters: Does the Residential Tenancy Act have jurisdiction to hear the disputes between the parties?

A copy of a "Contract of Purchase and Sale" dated July 23, 2014 between the parties was provided in evidence. The landlords are named as the sellers of the property, while the tenant is named as the buyer. There are terms in the contract which provide, in part:

PURCHASE PRICE: The purchase price of the Property will be One Hundred Sixty Five Thousand.

DEPOSIT: A deposit of \$10,000, which will form part of the Purchase Price, will be paid on the following terms; paid directly to the seller.

COMPLETION: The Sale will be completed on August 1, 2018 at the appropriate Land Title Office.

POSSESSION: The Buyer will have vacant possession of the Property at 8:00 a.m. on August 1, 2014.

A Contract of Purchase and Sale Addendum was also attached as page 5 out of 5, which reads in part:

The Seller agrees to hold a rent to purchase agreement for 48 months at \$1,000.00 per month. 50% of payment will go toward rent, and 50% will go toward the purchase price.

The completion of this agreement will be on July 2, 2018, at which time the buyer will have a credit of \$34,000.00.

Property transfer and registration will be completed on or before August 1, 2018. The buyer and seller may agree to complete the sale at any time before August 1, 2018.

If the buyer is unable to complete the purchase on or before July 2, 2018 all funds will be considered as rent and all improvements to the home will become the property of the seller.

Residential Tenancy Policy Guideline 27 provides the following, in part, with respect to jurisdiction under the Residential Tenancy Act and Manufactured Home Park Tenancy Act (the "Acts"):

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.

[reproduced as written]

The parties agreed that the tenant pays a monthly sum of \$1,000.00 to the landlords, half of which went towards the purchase price of the property. Both parties also agreed \$10,000.00 was paid as a deposit, which went towards the total purchase price of the home.

The landlords testified in the hearing that the contract of sale was cancelled, and the agreement became a tenancy after July 2, 2018 passed, and the tenant failed to fulfill the terms of the contract of purchase and sale by that date. The landlords acknowledged the fact that the tenant was diligent with his monthly payments, but failed to complete the purchase as required. The landlords wish to move into the home, and issued a 2 Month Notice to the tenant on November 29, 2018.

The tenant testified that he was confused by the dates on the contract, but that he was ready to complete the purchase by August 1, 2018. The tenant testified that the landlords wanted to cancel the contract as the home is now worth substantially more than the original agreed upon purchase price of \$165,000.00, and therefore the landlords did not give the tenant the opportunity to fulfill his obligations to complete the purchase of the home. The advocate for the tenant pointed out that the tenant's diligence in making all his monthly payments supports the tenant's intention to fulfill his obligations to purchase the home.

Both parties confirmed in the hearing that the tenant moved in at the beginning of the agreement, on August 1, 2014, and no previous tenancy agreement existed before both parties entered into the rent to purchase agreement.

I have considered the testimony and evidentiary materials of both parties in considering whether I have jurisdiction over this matter with respect to jurisdiction under the Residential Tenancy Act.

I find it was undisputed by both parties that the monthly payment of \$1,000.00 was divided equally, and half went towards the purchase price of the home. Additionally \$10,000.00 was paid by the tenant at the beginning, which also went towards the purchase price. Although the landlords believe that the tenant revoked his rights as a buyer by failing to complete the purchase, and essentially the contract became a tenancy where "all funds will be considered as rent", the tenant feels that a dispute

exists where he was not given a fair opportunity to complete his obligations to complete the contract of purchase and sale.

Essentially I find the main dispute lies in whether the tenant was able or allowed to exercise his right to purchase the property under the above agreement. As the issue is still outstanding of whether the tenant's rights as buyer were revoked or not, I find that I do not have jurisdiction over this matter under the Residential Tenancy Act.

Conclusion

I decline to hear the matter as I have no jurisdiction to consider both applications.

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: March 7, 2019

Residential Tenancy Branch