



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, MNDC, FFT

Introduction

This hearing was convened as the result of the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for the following:

- An order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord;
- An order suspending or setting conditions on the landlord's right to enter the rental unit;
- A monetary order for money owed or compensation for damage or loss; and
- For recovery of the filing fee paid for this application.

The tenants, the landlord, and his spouse attended and the hearing process was explained.

Thereafter the participants were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Issue -

At the beginning of the hearing, the exchange of evidence by the parties before the hearing was discussed.

The tenants said that they sent their evidence by registered mail and the landlord claimed not to have received it. In response to my inquiry, the landlord confirmed that he was currently in California and had been since December 2019.

I determined that the landlord was properly served with the tenants' evidence and I have accepted it.

The tenants said they did not receive the landlord's evidence; however, the landlord said it was sent by registered mail from California, providing the tracking number.

I made the determination to accept all evidence, as a good part of both parties' relevant evidence was duplicated.

Another matter raised was whether I had jurisdiction under the Act to decide this dispute. This matter was explored with the parties prior to the hearing on the merits of the tenants' application.

Issue(s) to be Decided

Does the Act apply to this dispute and do I have jurisdiction to decide this dispute?

If so, are the tenants entitled to an order cancelling the landlord's Notice?

Are the tenants entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?

Are the tenants entitled to a monetary order for compensation from the landlord?

Are the tenants entitled to recovery of their filing fee?

Background and Evidence

The parties agree on the following:

- that the tenants moved into the property in question on March 2, 2017, and were to pay \$600.00 per month;
- that the agreement between the parties included a separate signed contract titled "TERMS OF INSTRUMENT, Option to Purchase";

- that this contract contained the terms of the tenants' option to purchase the residential property and the landlord's agreement to sell the residential property;
- that the payment of \$600.00 was not to be credited toward the purchase price
- that their arrangement between the parties was a tenancy;
- that the tenants did not pay a security deposit;
- that the tenants paid a lump sum payment of \$10,000.00 on January 2, 2018, reflected in a receipt signed by the landlord, saying as "per our ongoing purchase arrangement".

In response to my inquiry, the tenants submitted that they paid the property tax for the first year of their occupancy of the residential property.

The Option to Purchase was submitted into evidence by both parties.

The tenants also submitted a copy of a receipt for a \$10,000.00 payment to the landlord.

Tenants' submissions –

The tenants submitted that they had an ongoing option to purchase the property until March 2020, and that they have now elected not to purchase the property.

The tenants agreed that they did not make the monthly payments of \$600.00 for December 2019, or January and February 2020, as they instructed the landlord to deduct those payments from the \$10,000.00 the landlord held in trust.

Landlord's submissions –

The landlord submitted that the \$10,000.00 payment was a part of a real estate purchase and not part of rent. The landlord submitted that the male tenant assured him the tenants were buying the property.

Analysis

Before considering the merits of this Application for Dispute Resolution, I must determine whether this application falls under the jurisdiction of the Residential Tenancy Act.

On the basis of the undisputed evidence that the tenants paid a lump sum of \$10,000.00 as a sole and exclusive option to purchase of the home, I find that the tenants had an interest in the property that goes beyond exclusive possession and occupation of the rental unit.

Additionally, under the "TERMS OF INSTRUMENT, Option to Purchase" contract signed by the parties, the Transferree (tenants here) agreed to make all payments in connection with the Lands, including but not limited to, property taxes, utilities, fire insurance, and repairs and maintenance. Further, the Transferor (landlord here) shall have no such expenses in regard to the Lands during the term of the Option.

I find that the \$10,000.00 payment transferred an interest in the rental unit which goes beyond the relationship of a landlord and tenant. I find that the tenants' financial interest and obligations of the property far exceed any of a tenant's rights and obligations under the Act.

Under section 9 of the Tenancy Policy Guideline, some factors that may weigh against finding a tenancy are that a payment of a security deposit is not required and the occupier pays property taxes and utilities.

Due to the above, I find on a balance of probabilities that the property is beyond the scope of the Act and I therefore find that I do not have jurisdiction over this matter.

As a result, I decline to award the tenants recovery of the filing fee.

The parties have the option of pursuing their claims through a court of proper jurisdiction.

Conclusion

I do not find the Residential Tenancy Act applies to this dispute contained in the application for dispute resolution of the tenants and I have declined jurisdiction.

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 7, 2020

Residential Tenancy Branch