



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FFL

Introduction

This hearing was scheduled in response to an application pursuant to the *Residential Tenancy Act* (the “Act”) for:

- an order of possession pursuant to section 46 and 55 of the *Act*;
- monetary compensation for unpaid rent pursuant to section 67 of the *Act*;
- filing fee pursuant to section 72 of the *Act*.

The Applicant CG, his spouse SG, the Respondent VS attended the hearing via conference call. The Applicants and Respondents were given a full opportunity to be heard, to present sworn testimony, to make submissions.

The Applicant CG testified the Respondents were served the Notice of Dispute Resolution together with the evidentiary package via Canada Post registered mail on February 24, 2020. I find that this satisfied the service requirements set out in sections 88 and 89 of the *Act*. The Canada Post tracking number is listed on the first page of this decision.

Issue(s) to be Decided

Are the Applicants entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the Applicants entitled to an Order of Possession pursuant to sections 46 and 55 of the *Act*?

Are the Applicants entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Preliminary Issue - Jurisdiction

The property is a detached home in the lower mainland. The Respondents were the original occupants and the registered title owners of the property until 2018 when the property was transferred to the Applicants. The Respondents occupied the rental property before the transfer of ownership and continue to live in the property with their family.

The parties signed a written tenancy agreement dated August 1, 2018 which provided that the monthly rent was \$7,000.00 a month, payable on the 1st of each month. A security deposit of \$3,500.00 was collected by the Respondent. An addendum was included in the tenancy agreement, which includes a clause stating that the Respondents must pay rent in the amount of \$21,000 every 3 months.

The Applicant testified that the Respondents were served with the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), dated February 24, 2020 by registered mail on February 24, 2020. The Notice indicates an effective move-out date of March 6, 2020.

The grounds to end the tenancy cited in the Notice were:

- 1) the Respondents owe the sum of \$ 42,000.00 due February 1, 2020.

The Applicants and Respondents provided lengthy submissions on issues including the history of the conflicts between the parties. The Applicants were unable to explain why the rent was not collected each month.

The Respondent VS testified that this was not a tenant and landlord relationship. The intention of the parties was to purchase the property back from the Applicants. The Respondent VS testified that an agreement had been drawn up, but a copy of the agreement was not filed in evidence by the parties.

The Respondent VS affirmed that he experienced financial difficulties and an agreement took place between the parties for the Applicants to raise a mortgage and purchase the property. The intention of the parties was that the Respondents were to purchase back the property.

The Respondent testified that he had given the Applicants bank drafts over the two years to purchase the property. A bank draft for the sum of \$28,000.00 was entered into evidence. The Respondent VS affirmed that he had been paying \$7,000 each month directly in the Applicants mortgage account up to September 2019 and further bank drafts had been given to the Applicants including a bank draft for \$50,000.00 via a broker.

Applicant SG testified that the Respondents had not paid any rent payments and they were concerned that the property would go into foreclosure in the next few months.

The respondent VS affirmed that there was an agreement with a broker with reference to the conveyance of the property and that there was a separate agreement in relation to the monetary transactions, but this agreement had not been filed in evidence, hence this was the reason why he did not dispute the Notice as the parties had agreed proposals with the broker with purchasing back the property from the Applicants.

The Applicant's wife testified that the Respondents had not paid any consideration in the form of rent whilst the Applicant CG testified that if the drafts are presumed to be consideration in the form of rent, then the Respondents have paid the rent up to March 2020.

Based on the affirmed testimonies and documentary evidence, and on the balance of probabilities I find as follows:

Analysis

Section 1 of the *Act*, defines a "tenancy agreement"

"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;

what this Act applies to

2 (1) Despite, any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

The Applicants have allowed the Respondents and their family to live in the Property since 2018 under an unclear agreement which includes a purchase agreement. I find that on the balance of probability, there is insufficient evidence that a tenancy exists between the parties. It is unclear if the Respondents have paid consideration in the form of bank drafts to purchase the property back or are paying rent.

In order to be successful in a claim put forward under the *Residential Tenancy Act*, the party making the claim must provide sufficient evidence to establish that a tenancy exists between the parties, as defined under the *Act*.

I find that the parties agreed to an arrangement which allowed the Respondents and their family to reside in the property. I find there is sufficient evidence that a verbal and written agreement existed as part of a larger transaction for the sale and purchase transaction of the property, albeit neither party submitted it into evidence. There is an independent agreement discussed with a broker which would allow the Respondents to purchase back the property.

I find that there are credibility issues relating to the transactions and the money drafts involved. The Applicant SG testified that the Respondents had not paid any consideration in the form of rent whilst the Applicant CG testified that if the drafts are presumed to be consideration in the form of rent, if that is the case, then the Respondents have paid the rent up to March 2020.

I find the Applicants themselves cannot agree whether a tenancy exists, or if they have entered into a new and separate agreement that allows for the Respondents to hold a Proprietary interest in the property itself. I find that the tenancy agreement does not create legal obligations on the part of the parties but an intention confirming that the Respondents have an interest in the Property.

I also find that the Applicants themselves can not agree to the purpose of the bank drafts received from the Respondents. As such, I cannot determine if these payments were rent or related to a new or separate agreement regarding the purchase back of the property by the Respondents.

When I consider the position of the two Applicants and the submissions of the Respondent that there may exist an alternate agreement regarding the purchase back of the property.

I find the Applicants have failed to establish that a tenancy agreement exists between the two parties as defined under Sections 1 and 2 of the *Residential Tenancy Act*. As such, I find I have no jurisdiction to hear the dispute.

Conclusion

Based on the above, I dismiss the application for Dispute Resolution with out leave to reapply.

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: April 30, 2020

Residential Tenancy Branch