



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on January 26, 2021, wherein the Applicants sought to cancel a 2 Month Notice to End Tenancy for Landlord's Use issued pursuant to section 49 of the *Residential Tenancy Act* (the "Act").

The hearing of the Application was scheduled for 9:30 a.m. on April 23, 2021. The line remained open while the phone system was monitored for fifteen minutes and the only participants who called into the hearing during this time were the Applicants. The Respondent did not attend this hearing, although I left the teleconference hearing connection open until 9:45 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Applicants and I were the only ones who had called into this teleconference.

As the Respondents did not call in, I considered service of the Applicants' hearing package. The Applicant, T.D. testified that they served the Respondent with the Notice of Hearing and the Application on January 29, 2021 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where

the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Act*, documents served this way are deemed served five days later; accordingly, I find the Respondent was duly served as of February 3, 2021 and I proceeded with the hearing in their absence.

Preliminary Matter—Jurisdiction

Before considering the merits of this Application for Dispute Resolution, I must determine whether I have jurisdiction under the *Act* to consider this claim.

The Applicants submitted that they are not tenants, but rather have a legal interest in the subject property. In support they provided a copy of a Contract of Purchase and Sale signed by both parties and dated March 16, 2020, which provides for a completion date of September 16, 2022. The Applicant, T.D. testified that they had made \$15,000.00 in payments towards the purchase of the property; documentary evidence submitted by the Applicants confirms these payments.

On the basis of the Applicants' undisputed evidence that they have made payments to the Respondent towards the purchase of the subject property, I find that the Applicants have a legal interest in the property that goes beyond exclusive possession and occupation of a rental unit and is beyond the relationship of a landlord and tenant. I find that the Applicants' financial interest in the property is outside the scope of the *Act* and I therefore find that I do not have jurisdiction over this matter.

In the event I am incorrect in terms of my finding with respect to jurisdiction, I confirm I would have granted the Applicants' request for the following reasons.

Although I have declined jurisdiction and have found that the Applicants are not tenants for the purposes of the *Act*, I will refer to the Applicants as "Tenants" and the Respondent as "Landlord" in relation to the claim before me, namely an application to cancel notices to end tenancy pursuant to section 49 of the *Act*.

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy.

As the “Landlord” failed to call into the hearing to provide evidence and submissions in support of the Notice, I find the “Landlord” has failed to meet the burden of proving the reasons for ending the tenancy. As such, should I have found jurisdiction, the “Tenants” would have been entitled to an Order canceling the Notice.

Conclusion

The parties entered into a contract of purchase and sale with respect to the subject property such that the Applicants have a legal interest in the property beyond that of tenants. I therefore decline jurisdiction over this dispute.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 28, 2021

Residential Tenancy Branch