



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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:

Landlord:

- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks and/or to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide testimony, present evidence and make submissions. No issues were raised with respect to the service of the application and evidence submissions on file.

Pre-liminary Issue

Do I have jurisdiction under the Act to make a decision on the application before me? If so is the landlord entitled to an order of possession and a monetary order for unpaid rent?

Background and Evidence

The tenancy began on March 1, 2020. The original lease was for a 24-month fixed term ending on February 28, 2022 and reverted to a month-to-month basis since. The monthly rent was set at \$2400.00 per month payable on the 1st of each month. No security deposit was paid for the tenancy.

The landlord issued the tenant a 10 Day Notice on April 28, 2022 citing \$1200.00 rent outstanding that was payable on April 1, 2022. The landlord testified the tenant only paid \$1200.00 for April 2022 and has not since paid any rent for May, June, July and August 2022. The tenant is disputing the Notice and alleges she has overpaid rent; however, it was evident the tenant made a serious error in her calculations as she had recorded a \$3000.00 payment in March 2020 as \$30,000.00.

The tenant submits that there is an ongoing dispute relating to the ownership of the property. The tenant testified that although she has retained a lawyer formal court proceedings have not yet been initiated. The tenant submits that she was referred to this company as they offered a lease to own program. The tenant testified that she gave a deposit of \$51,800.00 as a down payment and the rent in the lease was based upon a calculation of the mortgage payments plus property taxes and insurance. The tenant submits the purchase option was set for March 2022 which coincided with the end date on the lease. The tenant submitted a document titled "The Sandhill Inc. Rent to Own Home Ownership Program". The tenant testified that things got complicated when she was involved in a serious motor vehicle accident. After the accident she left her husband and the home during which time her husband carried on making rent payments. She was out of the home from September 2020 to April 2021. She took over making the payments when she returned. The landlord advised her that her husband was in rent arrears. She requested a two-year extension to the option to purchase timeline which was agreed to by the landlord. In December 2021 she made a payment of approximately \$11,000.00 which she was told was outstanding at that time. She later reviewed the landlord's calculations and feels she has overpaid rent by \$13,000.00 which is why she stopped making further rent payments.

The landlord acknowledged there was an offer of an option to purchase at the start of the lease. The landlord submits this option expired February 28, 2022 at the end of the original 2 year fixed term. The landlord submits it is now just a month-to-month tenancy and the purchase option is no longer relevant. The landlord denies any agreement to extend the purchase option. The landlord testified that he only commented that the right to purchase could be cancelled if the tenant was not up-to-date in rent payments. The landlord acknowledged a \$51,800.00 deposit was paid at the start of the lease. The landlord submits that this deposit was non-refundable as stipulated in the option to purchase contract. The landlord submits the tenant s in rent arrears to the tune of \$10,600.00 which is up to August 2022.

Neither party submitted a copy of the actual option to purchase contract.

Analysis

Before making any finding on the merits of the claim, I must determine if I have jurisdiction under the Act to make a decision on the application before me.

*Residential Tenancy Policy Guideline #27 “**Jurisdiction**”* provides the following guidance on page 27-5:

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.

I find the parties entered into lease to own contract. The tenant paid a substantial deposit in the amount of \$51,800.00 which was meant to be towards the down payment for the property. As such, I find the tenant may have an interest in the property which is higher than the basic right to possession under a tenancy agreement. Neither party submitted a copy of the actual option to purchase contract, so I am unable to make any findings on whether or not the tenant has forfeited the deposit and her right to exercise the purchase option.

Therefore, I find that the Act does not apply, and I do not have the jurisdiction to make findings on the remedies requested in both the above applications.

Both the above noted applications are dismissed in their entirety without leave to reapply.

Conclusion

I find that I do not have jurisdiction over this matter.

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: August 30, 2022

Residential Tenancy Branch