



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

MND, MNR, MNDC, & FF

Introduction

This hearing dealt with an application by the landlord seeking a monetary claim due to unpaid rent, cleaning costs to the rental unit and other expenses incurred due to breach of the contract by the tenant.

The landlord presented evidence that he served the tenant with notice of this application and hearing in person on February 3, 2009. The landlord also stated that the tenant subsequently provided a forwarding address and he served her with the evidence for this application by registered mail on March 31, 2009.

Although the tenant was served with notice of this proceeding in person, she did not appear for the hearing. I am satisfied that the tenant was served with notice of this proceeding in accordance with section 89 of the *Act* and as such I proceeded with the hearing in the tenant's absence.

Preliminary Issue

Before proceeding to examine and consider the merits of the landlord's application I must determine whether this application has jurisdiction under the *Residential Tenancy Act*. The legislation does not confer authority to consider disputes between all types of relationships between parties. Only relationships between landlords and tenants can be determined under the *Act*.

The landlord provided a copy of the contract between himself and the tenant which was signed on November 14, 2008. Even if the parties call a contract a tenancy agreement it is not necessarily a contract that can be determined under this legislation. Jurisdiction can be refused if the contract grants one party an interest in the property that goes beyond exclusive possession and occupation of the rental unit. If the contract gives the other party an interest in the land beyond possession then jurisdiction must be refused.

I find that the contract entered between the parties transferred an interest in the land which goes beyond the relationship of a landlord and tenant. The contract immediately granted the "tenant" an interest in the equity of the property which could be exercised at any time. The landlord described this aspect of the contract as a "call option" on the equity of the property but submitted that the relationship was otherwise a landlord and tenant relationship.

I disagree. The purchaser's right to the equity which could have been exercised at anytime during the term of the contract granted the purchaser an interest in the property beyond the scope of the *Residential Tenancy Act*. As a result, I decline to accept the landlord's application as his claim has no jurisdiction under the *Act*.

Conclusion

I dismiss the landlord's application. The landlord's claim does not fall under the *Residential Tenancy Act* as the other party had an interest in the property beyond that of a tenant. The landlord has the option of pursuing his claim through the Supreme Court of British Columbia.

Dated April 08, 2009.

Dispute Resolution Officer