



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession for unpaid rent, a monetary order for unpaid rent, money owed or compensation due to damage or loss and recovery of the filing fee.

Both parties participated in the conference call hearing.

Preliminary Issue(s) to be Decided

Before considering the merits of this Application for Dispute Resolution I must determine whether I have jurisdiction in this matter.

Summary of Background and Evidence

The applicant and respondent have a Contract of Purchase and Sale in place and a deposit of \$3000.00 has been made by the purchaser to the seller. After the Contract of Purchase and Sale was entered into, the purchaser expressed interest in occupying the rental unit and an agreement reached whereby the purchaser would pay the seller \$884.80 per month.

Residential Tenancy Policy Guideline 27. Jurisdiction speaks to:

5. TRANSFER OF AN OWNERSHIP INTEREST

If the relationship between the parties is that of seller and purchaser of real estate, the Legislation would not apply as the parties have not entered into a "Tenancy Agreement" as defined in section 1 of the Acts. It does not matter if the parties have called the agreement a tenancy agreement. If the monies that are changing hands are part of the purchase price, a tenancy agreement has not been entered into.

Similarly, a tenancy agreement is a transfer of an interest in land and buildings, or a license. The interest that is transferred, under section 1 of the Acts, is the right to possession of the residential premises. If the tenant takes an interest in the land and buildings which is higher than the right to possession, such as part ownership of the

premises, then a tenancy agreement may not have been entered into. In such a case the RTB may again decline jurisdiction because the Acts would not apply.

In the case of a tenancy agreement with a right to purchase, the issue of jurisdiction will turn on the construction of the agreement. If the agreement meets either of the tests outlined above, then the Acts may not apply. However, if the parties intended a tenancy to exist prior to the exercise of the right to purchase, and the right was not exercised, and the monies which were paid were not paid towards the purchase price, then the Acts may apply and the RTB may assume jurisdiction. Generally speaking, the Acts apply until the relationship of the parties has changed from landlord and tenant to seller and purchase.

In this case a contract of purchase and sale was entered into prior to there being any discussion or agreement for the purchaser to occupy the property as a renter. Therefore the original relationship of the parties was that of purchaser and seller not as tenant and landlord. I therefore find that the Residential Tenancy Act does not have jurisdiction over this matter.

It should also be noted that on March 21, 2012 under file 782293 the Dispute Resolution Officer found that the Residential Tenancy Act did not have jurisdiction over this matter.

The application is dismissed without leave to reapply.

Conclusion

I hereby dismiss the Landlord's Application for Dispute Resolution, as their claim does not fall under the *Act*. The Landlord has the option of pursuing his claim through the Supreme Court of British Columbia.

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 4, 2012

Residential Tenancy Branch