Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, O

Introduction

This matter dealt with an application by the Tenants to cancel a One Month Notice to End Tenancy for End of Employment dated August 2, 2012 and to recover the filing fee for this proceeding.

The Applicants said they served the Respondent with the Application and Notice of Hearing (the "hearing package") on August 14, 2012 by registered mail. According to the Canada Post online tracking system, the Respondent received the Applicants' hearing package on August 16, 2012. Based on the evidence of the Applicants, I find that the Respondent was served with the Applicants' hearing package as required by s. 89 of the Act and the hearing proceeded in the Respondent's absence.

Issue(s) to be Decided

1. Does this dispute fall under the jurisdiction of the Act?
2. If it does, does the Respondent have grounds to end a tenancy?

Background and Evidence

The Parties' executed a "Rent to Own" agreement on July 10, 2010 which provided for a "*month-to-month lease commencing July 15, 2012 for a period of 15 months*." The Applicants paid a deposit of $15,000.00. During the term of this Lease, the Applicants made monthly payments of $2,000.00 and $500.00 of each payment was to be applied to the purchase price. The Applicant, C.O., said the agreement was extended on its expiry for a further six month period with payments reduced to $1,500.00 per month but with $500.00 of each payment still to be applied to the purchase price.

The Applicant, C.O., claimed that on the expiry of the extended agreement, the Landlord terminated his employment and served him with a One Month Notice to End Tenancy for Cause dated August 2, 2012, the sole ground of which was that the "*tenant's rental unit is part of an employment arrangement that has ended and the unit is needed for a new employee*." The Applicant, C.O., said he has not waived his option to purchase the property and the deposit and other funds paid toward the purchase price have not been returned by the Respondent.

Analysis

RTB Policy Guideline #27 states at p. 4 as follows:

> "*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 Act(s). 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. ...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 Act may apply."*

In the absence of any evidence from the Respondent to the contrary, I find that the relationship between the Parties in this matter is one of seller and purchaser rather than one of Landlord and Tenant. The Parties executed a "Rent to Own" agreement and the Applicants made a deposit of $15,000.00 plus additional payments toward the purchase price during the term of this agreement. Consequently, I find that this matter is ***not*** one that falls under the jurisdiction of the Act and accordingly the application is dismissed in its entirety without leave to reapply.

Conclusion

The Applicants' application is dismissed without leave to reapply due as this matter is not one that falls under the jurisdiction of the Act. 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: September 13, 2012.

Residential Tenancy Branch