



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0774007 BC LTD
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

MNR, OPR, CNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking to cancel a Ten Day Notice to End Tenancy for Unpaid Rent dated July 9, 2014.

The hearing also dealt with a cross application by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated July 9, 2014 and a monetary order for rent owed.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent?
- Is the landlord entitled to monetary compensation for rental arrears owed and loss of rent?
- Should the 10-Day Notice to End Tenancy for Unpaid Rent be cancelled as requested by the tenant?

Preliminary Issue- Jurisdiction

The parties testified that the tenant entered into a tenancy and the parties signed a written contract. A copy of the agreement, titled, "*LEASE OPTION CONTRACT*" was submitted into evidence by the landlord.

The issue of jurisdiction arose because of the nature of the tenancy contract.

A determination of whether or not this is a tenancy relationship under the jurisdiction of the Act is contingent upon the question of whether or not the contract contains a transfer of any kind of interest to the tenant, beyond that anticipated by the Act.

According to the agreement, a portion of the \$1,850.00 monthly rental payment in the amount of \$650.00 "*shall be credited to the Tenant/Buyer and applied to the purchase price of the Property in the event that the Tenant/buyer exercises its option hereunder.*"

In the case where some of the funds paid constitute, or may possibly constitute, part of the purchase price, it follows that the interest exceeds that of mere tenant and may represent a form of ownership interest.

I find that the parties of the contract are also referred to within the document as "*Tenant/Buyer*" and "*Landlord/Seller*".

The Residential Tenancy Guidelines, state that, if the relationship between the parties is that of seller and purchaser of real estate, the Legislation would not apply because their "*Tenancy Agreement*" fails to meet the definition under section 1 of the Act. This is true regardless of the fact that the parties may have chosen to call the agreement a tenancy agreement.

. The definition of tenancy agreement in section 1 states:

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

A tenancy agreement is a transfer of an interest in land and buildings, or a license to occupy. The interest that is transferred, under section 1 of the Act, is only the right to possession of the residential premises and nothing more. I find that, 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 or payments towards ownership of the premises,

then a simple tenancy agreement anticipated under the Residential Tenancy Act does not exist.

In the case where some of the funds paid constitute, or may possibly constitute, part of the purchase price, it follows that the interest exceeds that of mere tenant.

In the case before me, I find that the parties have signed an amalgamated contractual agreement that contains numerous terms that are not permitted under the Act and includes terms that are clearly meant to apply to a purchase agreement.

Given the above, I find that I must decline jurisdiction in the matter before me as I have determined that I have no authority under the Residential Tenancy Act to consider or render a decision on the landlord's application.

Conclusion

Based on the determination that this tenancy relationship is not one that falls under the jurisdiction of the Act, I hereby dismiss the landlord's application in its entirety without leave to reapply.

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: July 30, 2014

Residential Tenancy Branch

