



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, OPB, MNR, FF, O

Introduction

This hearing was convened by way of conference call in response to an application made for an Order of Possession for unpaid rent; for an Order of Possession for cause; for an Order of Possession because the tenant breached an agreement with the landlords; for a Monetary Order for unpaid rent; other issues; and to recover the filing fee from the tenant for the cost of this application.

The Applicants provided sworn testimony and written evidence in support of their claim. On examination of the Applicants' written evidence, I focused my attention to a document titled "Terms of Instrument Part 2". The document refers to the Applicants as the Vendor and the Respondent as the Purchaser. This document also states that the Purchaser will have full possession, control and responsible for the maintenance and repair of the property from the possession date of August 01, 2012. This document goes on to state that the Vendor has agreed to grant an option to purchase the property on the terms and conditions as hereinafter set out. The document lists all conditions. The Applicants verified the above details in their oral testimony at the start of the hearing. The Applicants also testified that the Respondent was to pay the Applicants \$3,000.00 a month and this amount went towards the purchase price. The Respondent was to pay the mortgage for two years and then on July 31, 2014 the Respondent had to have enough funds to exercise the option to purchase the balance of the cost of the property.

The Applicants testified that the Respondent has since vacated the property on or before September 30, 2014 and did not adhere to the terms of the agreement as the

Respondent failed to make her payments for the last two months she had possession of the unit.

Analysis

Policy Guideline 27 to the *Residential Tenancy Act* (Act) explains the jurisdiction Arbitrators have under the Act. Section 5 of this guideline provides guidance on agreements with a right to purchase and states the following:

"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 purchaser”.

[Reproduced as written.]

I have considered the above provisions of the policy guideline along with the oral and written evidence of the Applicants and I find that as this tenancy involves a rent to purchase agreement where the rent was intended to be applied to the total purchase price and that the relationship between the parties is that of seller and purchaser of real estate and not that of landlord and tenant. I therefore find that the Legislation does not apply to this tenancy and therefore I decline jurisdiction in this matter. The applicants are at liberty to seek alternative legal remedies to address their dispute.

Conclusion

For the reasons set out above, I dismiss the application **without** leave to re-apply, pursuant to Section 62(4) (b) 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: November 05, 2014

Residential Tenancy Branch

