



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *OPC, MNR, CNC, OLC, FF*

### **Introduction**

This hearing dealt with applications by the landlord and the tenant pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and a monetary order for unpaid rent and for the recovery of the filing fee. The tenant applied to cancel the notice to end tenancy, for an order directing the landlord to comply with the *Act* and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### **Issues to be decided**

Are the parties in a contract that puts them in a landlord tenant relationship? If so, is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to monetary order to recover unpaid rent?

### **Background and Evidence**

On July 25, 2012, the landlord named in this decision SH entered into a contract with a company by the name of GVCPS (not named by the landlord in this proceeding and referred to as GVC in this decision). The contract consisted of a lease agreement with an option to purchase real estate.

The term of the lease agreement was one period of 12 months, commencing July 25, 2012 and ending on July 25, 2013. The term would then automatically renew for four periods of 24 months each. The rent was set at an amount equal to the monthly mortgage, property taxes, strata fee and insurance and would not exceed \$900.00. The rent would commence as soon as the tenant found a sub tenant or a buyer.

The contract also contained the option to purchase terms. The purchase price was set at \$30,000.00 plus the amount owing on the mortgage.

On September 20, 2012, the contract was amended and the parties agreed to a monthly rent that would not exceed \$800.00.

On February 25, 2016 the same parties entered into second lease agreement with an option to purchase real estate, similar to the first one. The term of this lease agreement was one period of 12 months commencing February 25, 2016 and ending on February 25, 2017. The term would then automatically renew for two periods of 24 months each.

On March 11, 2016, GVC entered into a contract of sale and purchase with the tenant named in this decision (AA). The purchase price was set at \$228,000.00 and AA paid a deposit of \$14,000.00 which would be credited towards the purchase price upon completion of the sale. One of the terms of the sale was that AA would rent the property starting March 15, 2016 until the completion of the sale that was slated for August 31, 2016. The rent was set at \$1,188.00.

On March 15, 2016, GVC and AA entered into a tenancy agreement. AA rented the dispute rental property on a month to month basis for a monthly rent of \$1,188.00

On August 31, 2016, the closing date on the contract of purchase and sale between GVC and AA was amended to December 31, 2016. On December 31, 2016, this completion date was further amended to June 15, 2017 and then on June 15, 2017 the closing date was extended to November 15, 2017.

December 18, 2017, the landlord served AA with a notice to end tenancy for cause. The reason for the notice was that the tenant was repeatedly late paying rent. AA disputed the notice by making application on December 30, 2017. The landlord pointed out that AA had not made application within the legislated time frame of 10 days.

In his written submission, AA stated:

*My landlord has always been GVC Property Solutions Inc. I have signed a contract to purchase the condo. My agreements and dealings for the condo are solely with GVC Property Solutions. I have never entered into a verbal or written agreement with SH for the condo & I have never provided SH with rental payments since living in the condo. SH & GVC Property are in a dispute that doesn't involve me.*

*SH's grievance is preventing me from purchasing the condo. I have never met SH & she has never been my landlord. I have never entered into any type of verbal or written tenancy agreement with SH for the property.*

*My landlord for the property has always been GVC Property Solutions Inc. My agreements for the property are with GVC Property Solutions Inc., not SH. I would like to be reimbursed by SH for having to file this application considering SH is not my landlord and has never been my landlord.*

Documents regarding rent payments from GVC to SH were filed into evidence.

### **Analysis**

*Residential Tenancy Policy Guideline 27* addresses jurisdictional matters. This guideline states that 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.

In the case of a tenancy agreement with an option to purchase, the issue of jurisdiction will turn on the construction of the agreement. If the agreement meets the test outlined above, then the *Act* 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 *Act* may apply and the Residential Tenancy Branch may assume jurisdiction.

In this case, I find that the parties to the lease agreements with option to purchase dated July 25, 2012 and February 25, 2016 are SH as the landlord/seller and GVC as the tenant/buyer. I further find that AA who is named as the tenant in this dispute is not in a contractual relationship with the landlord SH. Based on the documents filed into evidence; I find that AA is in a contractual relationship with GVC. Therefore, the landlord SH has named the wrong party as the tenant in this proceeding.

In his written submission AA states that SH is not and has never been his landlord but has named SH as the landlord in his application to dispute the notice to end tenancy because SH served AA with the notice. The landlord argued that the GVC assigned the contract to AA but did not file sufficient documentation to support her testimony.

Based on the above, I dismiss the applications of both parties. The landlord must bear the cost of filing her application. In the case of AA, after having received a notice to end tenancy from SH, he was forced to file an application for dispute resolution against SH even though he does not have a contractual relationship with SH. Therefore I find that AA is entitled to the recovery of the filing fee.

I grant AA a monetary order under section 67 of the *Residential Tenancy Act*, for **\$100.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The parties, SH, GVC and AA may want to consider that if AA has paid a deposit which will be credited towards the purchase price of the property, then the *Residential Tenancy Act* may not apply. In addition the evidence of the landlord SH makes reference to a matter pending in another court. Section 27 of *Residential Tenancy Policy Guideline* addresses the jurisdiction of the *Residential Tenancy Act*. This section states that if a dispute is linked substantially to a Supreme Court action, then the arbitrator may decline jurisdiction

### **Conclusion**

The application of the landlord SH is dismissed. I grant AA a monetary order of \$100.00.

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: March 10, 2018

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Residential Tenancy Branch