



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR-DR FF / CNR OLC LRE FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for unpaid rent and utilities pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to change the locks and/or to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide testimony, present evidence and make submissions on the preliminary matter of jurisdiction. No issues were raised with respect to service of the respective applications.

Issues

Do I have jurisdiction under the Act to make a decision on the application before me?

Background and Evidence

The parties entered into a contract of purchase and sale for the property in question on January 29, 2019 with a completion date of February 4, 2019. The landlord in these applications was the “purchaser” and the tenants the “sellers”. The contract provides that the sellers would remain as tenants until August 1, 2019; however, it does not contain any other terms with respect to the tenancy. The contract also provided that the purchaser would pay out the existing mortgage with an immediate lump sum payment of \$200,000 and the balance of \$270,000 was to be paid within 12 months.

The respondent submits they still hold a second mortgage on the property in question and have commenced foreclosure proceedings in the Supreme Court. Copy of the Supreme Court proceeding registered by the respondent on August 29, 2019 was submitted as evidence.

The landlord acknowledged the Supreme Court proceedings and stated he was in the process of having the foreclosure quashed.

Analysis

Before making any finding on the merits of the claim, I must determine if I have jurisdiction under the Act to make a decision on the application before me.

Section 51(2)c of the Act requires that the director must resolve an application for dispute resolution which it accepts under this section unless the dispute is linked substantially to a matter that is before the Supreme Court.

I find that this matter does not fall within the jurisdiction of the Act as it is substantially linked to a matter that is currently before the Supreme Court. The applicant/landlord is seeking an order of possession for a property which the respondent/tenants have initiated foreclosure proceeding in the Supreme Court.

Conclusion

I find that I do not have jurisdiction over this matter as it is currently before the Supreme Court.

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: October 07, 2019

Residential Tenancy Branch