

Residential Tenancies Tribunal

Application █

Decision 21-0022-01

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:37 a.m. on September 27, 2021, via teleconference.
2. The applicant, █ hereinafter referred to as the "Applicant" attended by teleconference.
3. The respondent, █ hereinafter referred to as the "Respondent" attended by teleconference

Preliminary Matters

4. A friend of the Applicant, █ also attended as a witness and gave testimony. She served the Respondent the termination notice (█#04).
5. The Applicant submitted the affidavit of service (█#01) stating that the notice of the hearing was delivered personally by a courier to the Respondent on September 16, 2021 at approximately 6:00 p.m. The Respondent agreed that she was given notification of the hearing in this manner.
6. The Applicant amended his claim to reflect September rent owing. Initially there was \$8,000.00 rent owing which has been amended to include the September rent, the new total is \$9,000.00.
7. During the presentation of the claim an issue of jurisdiction arose, this required a decision prior to deciding the issues included in the Application for Dispute Resolution. The following is this tribunal's decision regarding Jurisdiction.

Issues before the Tribunal

- The tribunal is required to adjudicate on its jurisdiction to hear this claim.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. Also relevant and considered in this decision is Section 1-2, Section 1-8 and Section 9-1 of the Residential Tenancies policy manual.

Issue 1: Jurisdiction

Applicant's Position

10. The Applicant submitted a rental agreement (█ #03) with his application. The rental agreement is for the property in question, it lists the address as the same for both the Applicant and the Respondent. The Applicant currently lives at another address.
11. The rental agreement is for a fixed 12 month term beginning on March 7, 2020. The rent is for \$1,000.00 due on the 7th of each month. There was no security deposit paid.
12. The agreement was signed by both parties on February 7, 2020. Both parties took occupancy on April 29, 2020. The Applicant submitted the rental agreement and confirmed that this agreement was a legal document.
13. The Applicant provided a rent ledger (█ #02). The ledger begins on January 7, 2021. It confirms that there was no security deposit paid. The ledger indicates that no rent had been paid since this time.
14. The Applicant acknowledges that they were in a previous relationship, however it was for less than two years and he states that it is not a common law relationship.
15. The Applicant included his mortgage papers (█ #05) that are signed by the Applicant on February 27, 2020. The finances are shown to have been released for the property on April 29, 2020; this is the day both parties moved into the house. The Applicant's name is the only name listed on the mortgage for the house in question.
16. The Applicant did not dispute that the Respondent paid \$18,000.00 towards the down-payment for the mortgage, but he responded he sold his mobile home and paid some of this back.

Respondent Position

17. The Respondent declared that she never signed a rental agreement with the Applicant. She acknowledges that it looks like her signature, however she states she absolutely never signed this document. The first time she remembers seeing this was in her package from this Board.
18. She stated that she believes that the agreement is forged and will be taking this further.

19. The Respondent stated that this is not a landlord tenant relationship. They were in a romantic relationship and she was never the tenant.
20. The Respondent said she paid \$18,000.00 for the down-payment on the house and the Applicant paid \$7,000.00.
21. The Respondent said that the Applicant “made up” a job to qualify for the mortgage and she thinks that this agreement was probably also used to qualify for the mortgage.
22. The Respondent said she has given the Applicant money, but has never paid rent.
23. The Respondent made reference to matters coming up in court concerning the ending of this relationship.

Analysis

24. At the outset the matter appears to be a “he said she said” situation, with both parties denying the claims of the other. The burden of proof lies with the Applicant.
25. Upon further inspection of the documents provided by the Applicant, it is apparent the Respondent’s version of the events more closely fit the timelines in the mortgage and rental agreement papers.
26. The mortgage papers (█#05) are signed on February 27, 2020 with a possession date of April 29, 2020. The rental agreement (█#03) is signed on February 7, 2020; this is before the mortgage is signed. It has a first payment date of March 7, 2020 with a move in date of April 29, 2020. It is not typical for a tenant to start paying rent approximately two months before they would move into house, to a landlord who does not own the property at that time.
27. The Residential Tenancies Policy 1-2, DEFINITIONS OF LANDLORD AND TENANT “The division has no authority in agreements where there was never any intent to create a landlord and tenant relationship. The relationship of landlord/tenant must clearly exist in order to begin a claim in this division.” The mortgage papers (█#05) and the rental agreement (█#03) reflect the testimony of the Respondent as outlined in paragraph 19. She stated that they were never landlord tenant and that they were in a romantic relationship. She stated, as shown in paragraph 20 that she paid \$18,000.00 towards the down-payment of the property and this is acknowledged in paragraph 16 by the Applicant.
28. The Residential Tenancies Policy 1-8 RENT TO OWN AND OPTION TO BUY “Rent to own agreements are not covered by the Residential Tenancies. Purchasers do not qualify as tenants. Under a rent-to own agreement, the original owner still holds an interest in the property as does the tenant, therefore they are both part owners.” Although the rental agreement is not listed as rent to own, both parties relayed that at the time of the purchase of the home, the Respondent paid the largest portion of the mortgage down-payment. This indicates the Respondent is not a tenant but instead holds interest in the property.

29. The Residential Tenancies Policy 9-1 CLAIM REFUSALS "The division does not have authority to rule on any matter where ownership of the property, or another matter related to the claim, is being contested before the court." Both parties acknowledge that there is a court hearing forthcoming to deal with the ending of this relationship.
30. The relationship of the parties to the property is not that of a landlord and tenant. The applicant has not met the burden of proof to define the Respondent as a tenant. The mortgage papers (■#05), the Rental Agreement (■#03) and the rent ledger (■#02) indicate that the Respondent was tied to the purchase of the house, her rental agreement begins almost two months before they take possession of the property and she appears to never pay rent. Further to this, once the relationship breaks down a landlord tenant relationship could begin, however, there is no agreement for that time period. The agreement submitted predates the ownership of the home by either party.

Decision

31. This claim is not under the jurisdiction of this board. There is no Landlord Tenant relationship established.

October 5, 2021

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office