

Residential Tenancies Tribunal

Application: 2022 No. 0773 NL

Decision 22-0773-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:03 AM on 27 October 2022 via teleconference.
2. The applicant [REDACTED] participated in the hearing, as did her authorized representative, [REDACTED]. [REDACTED] testified that she was representing the interests of [REDACTED], the other applicant. The respondents, [REDACTED] and [REDACTED] also participated.
3. An affidavit of service was provided by [REDACTED] (A#1) confirming that [REDACTED] [REDACTED] were served by Xpresspost on 11 October 2022. This service was confirmed by the respondents.
4. The applicants and respondents signed a "Rent to Purchase Agreement" (A#2 "the Agreement") on 27 August 2020 for the premises located at [REDACTED] [REDACTED]. As per the terms of this agreement, the applicants were to purchase the premises no later than 31 August 2022 for the purchase price of \$187,000.00. However this purchase did not occur because the applicants were issued a "notice of rental termination" (A#3) on 01 July 2022 and they vacated the premises on 28 August 2022. The respondents disputed that this action represented a termination of the rental agreement.
5. The subject matter of the applicants claim, is the requested return of a \$3,500.00 deposit amount that was paid to the respondents on 01 September 2020. Both parties agreed that this money was not a security deposit, and that as per the terms of the Agreement this money was to be "given to the tenants on the day of purchase". Both parties also agreed that \$850.00 in monthly "rent" was paid as required and that from this amount, \$225.00 was "put aside" each month during the 24 months of occupancy as per clause 33 of the Agreement. Both parties also agreed that this money was to be returned to the applicants with the purchase of the premises, however, they disagreed on the exact means through which this money was to be returned.


6. According to Residential Tenancies Policy 01-008, "Rent-to-own agreements are not covered by the *Residential Tenancies Act* (the *Act*) if the tenant holds any interest in the property" as per s. 3(4)(k) of the *Act*. This is because an agreement to sell creates the relationship of vendor and purchaser, not landlord and tenant. Regarding the subject matter of this dispute, I find that the agreed upon monthly sum that was collected and returned to the applicants on purchase, represented interest in the property. According, I find that the applicants' request for the return of the secondary sum of money (the \$3,500.00) to be a vendor and purchaser dispute and not a landlord tenant dispute. As such, I will reserve judgement on this matters for a court of appropriate authority.
7. This matter falls outside the jurisdiction of this Tribunal and the applicant's claim is dismissed.

Decision

8. This matter falls outside the jurisdiction of Residential Tenancies Tribunal.
9. This application is dismissed.

27 October 2022

Date


Jaclyn Casler
Residential Tenancies Tribunal