

Residential Tenancies Tribunal

Application 2023 No. 518NL

Decision 23-0518-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:16 AM on 16 August 2023 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED] ("[REDACTED]"). The respondents, [REDACTED] ("[REDACTED]") and [REDACTED] ("[REDACTED]"), were also in attendance.

Issues before the Tribunal

3. The applicant is seeking the following:
 - An order for a payment of \$12,075.00 in compensation for damages,
 - An order for a payment of \$5500.00 in compensation for inconvenience, and
 - An order for a payment of rent in the amount of \$8250.00.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this decision are sections 3 and 42 of the *Residential Tenancies Act, 2018*.

Issue 1: Does this Tribunal have Jurisdiction to hear these Matters?

Issue 2: Was this Application Filed in Time?

Relevant Submissions

The Applicant's Position

6. █ stated that he had entered into a purchase-and-sale agreement with the respondents in mid-November 2021. He testified that they had both signed this agreement and that the agreed purchase price was set at \$440,000.00. No copy of that agreement was submitted with his application.
7. While █ and █ were making financing arrangements, they were allowed to move into the property and they took possession in November 2021. Additionally, it was verbally agreed that they would pay IH \$2500.00 per month in rent, and if they were unable to secure financing, that rent would increase to \$2750.00.
8. In March 2022, █ stated that it became apparent that the respondents could not secure financing and their purchase-and-sale agreement fell through at that time. He stated that █ paid her portion of the agreed upon increase of rent at that time, but no payment was received from █.
9. █ testified that the respondents had moved out of the property by 07 May 2022, and their tenancy ended on that date. He did complain, though, that a vehicle had been left in his garage.

The Respondent's Position

10. The respondents agreed that they had entered into a purchase-and-sale agreement with █ in November 2021, though they both claimed that they could not recall whether they had signed that agreement. █ stated that the purchase price was set at \$425,000.00 or \$430,000.00, and not \$440,000.00.
11. █ claimed that while they were waiting to secure financing for the property, they had also entered into a verbal rent-to-own agreement with █ whereby they would pay him \$2000.00 per month, and not \$2500.00, as █ had claimed. █ stated that this amount was not "rent" but was rather a fee for IH's services.
12. █ claimed that the financing for the purchase of the house had been arranged, and they were only waiting on █'s portion of the down payment. But before █ could produce that down payment, █ claimed that █ evicted them. He testified that he promptly moved out of the property on 01 March 2022, and █ stated that she had left on 07 May 2022.

Analysis

13. I informed the parties at the hearing that I would not hear [REDACTED]'s application, and I gave 2 reasons, which I repeat here.
14. First, this Tribunal's jurisdiction is restricted to the general administration of the *Residential Tenancies Act, 2018*, and section 3 of this Act states:

Application of Act

- 3. (1) Notwithstanding another Act or agreement, declaration, waiver or statement to the contrary, this Act applies where the relationship of landlord and tenant exists in respect of residential premises.*
 - (2) Notwithstanding another Act or agreement, declaration, waiver or statement to the contrary, this Act applies to residential premises, residential complexes and rental agreements, whether made before or after this Act comes into force.*
 - (3) The relationship of landlord and tenant shall be considered to exist in respect of residential premises where the tenant*

 - (a) uses or occupies residential premises and*

 - (i) has paid or agreed to pay rent to the landlord, or*
 - (ii) a governmental department or agency has paid or has agreed to pay rent to the landlord;*
 - (b) makes an agreement with the landlord by which the tenant is granted the right to use or occupy residential premises in consideration of the payment of or the promise to pay rent; or*
 - (c) has used or occupied residential premises and*

 - (i) has paid or agreed to pay rent to the landlord, or*
 - (ii) a governmental department or agency has paid or agreed to pay rent to the landlord.*

15. [REDACTED] stated that in November 2021, he had entered into a written agreement of purchase and sale with the tenants, and he testified that this agreement was signed by the tenants, for a purchase price of \$440,000.00. Although the respondents dispute the amount of the sale price, and although they do not recollect whether that agreement was signed by them, they also acknowledged that they had entered into a purchase-and-sale agreement with [REDACTED].
16. By entering into such an agreement, the relationship between [REDACTED] and the respondents becomes one of vendor and purchaser, and not that of landlord and

tenant, as characterized in section 3 of the *Act*, just quoted. As this Tribunal's authority and powers are restricted to the relationship of landlord and tenant, and as it can make no ruling or order concerning relationships between vendors and purchasers, I conclude that this matter falls outside our jurisdiction.

17. But even if I am mistaken about this, there is a second reason why this matter cannot be heard by this Tribunal. Section 42 of the *Residential Tenancies Act, 2018* states

Application to director

42. (1) A landlord or tenant may, within one year after termination of the rental agreement, apply to the director to determine

- (a) a question arising under this Act or the regulations;***
- (b) whether a provision of a rental agreement has been contravened; or***
- (c) whether a provision of this Act or the regulations has been contravened.***

(2) An application under subsection (1) shall be submitted to the director in the form and with the fee set by the minister.

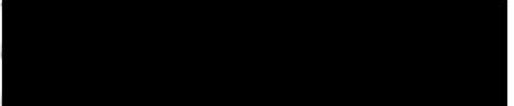
18. ■ acknowledged at the hearing that the respondents had moved out of the unit on 07 May 2022, and he claimed that their agreement (which he characterized as a "rental agreement") had ended on that date, and that he was henceforth in possession of the property.
19. If this was indeed a tenancy (which it wasn't; see paragraphs 13-16, above), in which ■ was the landlord and ■ and ■ were his tenants, as it was terminated on 07 May 2022, the landlord had until 07 May 2023 to make application to the director concerning any issue outlined in section 42.(1), above.
20. The application that was filed with this Section was dated 24 May 2023, and was filed with us on 01 June 2023. Hence, as ■'s application was not filed within the 1-year time-limit set out here, it could not be heard.

Summary of Decision

21. This matter falls outside the jurisdiction of this Tribunal, as set out in section 3 of the *Residential Tenancies Act, 2018*.
22. This application was not filed within the 1-year time-limit, as set out in section 42 of the *Residential Tenancies Act, 2018*.
23. The application is dismissed.

17 August 2023

Date


John R. Cook
Residential Tenancies Tribunal