

Residential Tenancies Tribunal

[REDACTED] Decision 20-0039-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am on 20 November 2020** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland via Bell Teleconferencing System.
2. The applicant, [REDACTED] (), hereafter referred to as the applicant, participated in the hearing. – **Affirmed**.
3. The respondent, [REDACTED] (), hereafter referred to as respondent1, participated in the hearing – **Affirmed**.
4. The respondent, [REDACTED] (), hereafter referred to as respondent2, participated in the hearing – **Affirmed**.
5. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

6. The affidavit submitted by the applicant show that the respondents were served with the notice of this hearing on the **28 August 2020** by serving the original documents personally to [REDACTED].
7. During the presentation of the claim an issue of jurisdiction arose that required a decision before the continuation of the claim presentation could proceed. The following is this tribunal's decision regarding Jurisdiction.

Issues before the Tribunal

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

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
10. Also relevant and considered in this case are Sections 3 of *the Act*, and Policy 1-8: *General Issues: Rent to Own (Option to Purchase)*.

Issue 1: Jurisdiction

Position

11. The parties during the presentation of their claim in this matter, indicated that this agreement was a rent to own agreement. As such, a discussion related specifically to the agreement was required before any evidence on the original claim takes place.
12. A challenge to the jurisdiction of this tribunal to hear this matter was raised resulting from Section 3(1) which reads:

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.
13. Both parties acknowledge that there was an agreement to rent to own with the set purchase price of \$40,000.00. They differ slightly on the conditions of that agreement.
14. The applicant initially indicated that a rent to own agreement was signed between both parties to commence on 01 January 2020 with a payment of \$250.00 per month until the agreed purchase price was paid in full. She testified that there was a written signed document but did not have a copy of the document. The landlord further testified that a condition of the agreement was that any and all back rent was to be paid. The landlord stated she just wanted to get rid of the house.
15. The respondent testified that the agreement was for \$40,000.00 to be paid in monthly payments of \$250.00 until the amount was paid. The respondent further testified that she did have a copy of the agreement but it must have been misplaced during the move. She disagrees with the applicant's assertion that the rental arrears had to be paid before it started. It was her assertion the any arrears was to be paid, but the agreement started as well.

Analysis

16. I have reviewed the testimony and evidence of the applicant and respondents in this matter of jurisdiction. The particular section of the legislation is quite clear in that it outlines that a landlord and a tenant relationship must exist for the Residential Tenancies Act to apply. The facts are clear in that both parties entered into a rent to purchase agreement to commence on 01 January 2020 where it was clearly set out that there was a purchase price and that rents paid would be applied against the purchase price. This clearly establishes an equity stake in the property for the purchaser. This equity stake makes the relationship between both parties not that of a landlord and tenant. The agreement is that of a real estate transaction which is clearly not in the jurisdiction of this tribunal. I find that this tribunal does not have jurisdiction to hear these claims resulting from the lack of establishment of a landlord and tenant relationship in *Section 3(1)* of the *Residential Tenancies Act*. Parties to this claim are hereby referred to the appropriate court of jurisdiction to adjudicate this matter.

Decision

17. **The Residential Tenancies tribunal hereby relinquishes jurisdiction in this matter to the court of appropriate jurisdiction.**

26 November 2020

Date


Michael Greene
Residential Tenancies Tribunal