



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNDC & FF

Introduction:

These hearings dealt with an application by the tenant for loss or damage under the *Act*. The tenant originally began to pursue a claim in damages against the landlord on file #196905 which was heard on June 29, 2007. Neither of the parties appeared for the hearing on this file and the tenant subsequently requested a review of that decision. In the review decision of August 8, 2007 the tenant's review consideration was granted.

In this decision, the Dispute Resolution Officer stated in part:

*"I have carefully reviewed the file which contains the basis for the tenant's monetary claim and while it contains a multitude of documents, some of which are illegible and others which are incomprehensible, there is no detail provided as to what the \$25,000.00 claim is for or how she arrived at that figure... Based upon the foregoing facts and analysis and pursuant to Section 82(3) of the Act, I hereby vary my original decision such that the tenant's application is dismissed **with liberty to reapply**. I have not made any decision on the merits of the tenant's case."*

The tenant made this application on May 30, 2008 and a hearing was scheduled to be heard on July 23, 2008. The respondent sought an adjournment of this hearing and the tenant agreed to the adjournment. The hearing was scheduled to reconvene on September 29, 2008. The hearing of September 29, 2008 went forward; however, at that time the tenant was ill and requested an adjournment. The tenant also requested an adjournment to collect additional evidence that she had originally submitted with her original application on file #196905. The landlord's agent did not dispute the tenant's request for an adjournment at this time.

The hearing was reconvened, in person, on November 25, 2008. Both parties appeared for the hearing and were provided the opportunity to present affirmed evidence and respond to the evidence of the other party. I note that the tenant did not submit any new evidence prior to the final hearing date.

I have also amended the tenant's application to reflect her name.

Issue to be Determined:

Has the tenant established a monetary claim due to loss or damage under the *Act*?

Background and Evidence:

This tenancy began on approximately February 1, 2004 for the monthly rent of \$1,600.00 and a security deposit of \$800.00. Although there is a written tenancy agreement it was not submitted as evidence in this proceeding.

The tenant is seeking a monetary claim in damages related harassment, threats and mental stress due to the actions of the landlord or their agents. The tenant is also seeking damages due to lost business opportunities she alleges she lost due to the mental stress and health issues she suffered as a result of the actions of the landlord and their agents.

Although the tenant has had significant time to prepare for this hearing her submissions and evidence are disjointed, at time illegible and difficult to comprehend. It was exceptionally difficult from the tenant's evidence to establish any time frames when the alleged harassment and threats occurred.

From the tenant's evidence I was able to determine that her allegations of damage appear to arise out of conflict with the landlord about Notices to End Tenancy that were served and the subsequent dispute resolutions hearings arising from those notices. The dispute also is centralized around the landlord's attempt to market and sell the rental unit which includes allegations that the landlord's realtor gained illegal access to the rental unit. Finally, the parties are embroiled in a dispute around an option to purchase the rental unit. There are multiple Supreme Court proceedings surrounding this conflict. I was unable to determine if these proceedings also include a claim for damages.

The main allegations surrounding the illegal access to the rental unit and the majority of the Notices to End Tenancy appear to have occurred during the timeframe of November 2006 until February 2007. However, the tenant has indicated that other Notices to End Tenancy were issued up to the spring or summer of 2008. The tenant has not included any of the Notices to End Tenancy as evidence in this proceeding.

The tenant submits that in her attempts to defend her tenancy and pursue her rights to purchase the rental unit she has suffered mental health and physical health sequela. She submits that due to these conditions she has also lost business opportunities.

Counsel for the landlord submitted that the tenant's application is lacking in evidence to support her claim for compensation. Counsel stated that he had knowledge that the tenancy was for a fixed term which has subsequently expired. The tenant originally had an option to purchase the rental unit; however, the conditions of sale were not completed. The issue of the pending sale of this rental unit is currently under the jurisdiction of the Supreme Court. The landlord questioned the medical evidence submitted by the tenant's doctor. He indicated that the medical opinion lacks any expert evidence to establish causation and despite his attempts to cross examine the medical opinion the doctor remains unavailable. Counsel for the landlord requests that the medical opinion submitted be given no weight.

Respecting the tenant's claim for loss related to losing business opportunities, Counsel argued that the tenant has not established any connection between the landlord's actions and the tenant's failure to pursue these business opportunities. He also stated that there are a multitude of circumstances which could have also resulted in these business opportunities from proceeding.

Counsel for the landlord argued that the tenant has provided no evidence to support her allegations that the landlord has harassed or threatened her. There are no police records submitted or witnesses. The landlord submits that there is no evidence submitted by the tenant on which he can defend.

Regarding the service of Notices to End Tenancy under the *Act*, counsel for the landlord submits that this is a right granted under the *Act* and both parties have participated in dispute resolution hearings.

Counsel for the landlord requests that the tenant's application be dismissed as having no merit.

Analysis:

The tenant has filed an application for a monetary claim in the sum of \$25,000.00. The tenant has the burden of proving her allegations and providing evidence to support her claim.

The tenant also has an obligation to diligently pursue her application and provide evidence in support of her application to the respondent and the Residential Tenancy Branch. The evidence submitted by the tenant is largely illegible and incomprehensible and there is no detail provided as to what the \$25,000.00 claim is for or how she arrived at that figure.

Although both parties made submissions respecting a medical opinion I do not have a copy of this evidence before me in the documents submitted by the parties. I have no copy of the tenancy agreement or documents related to any option to purchase. I have no copies of the alleged Notices to End Tenancy or of previous decisions made under applications to the Residential Tenancy Branch.

The tenant has been pursuing this application for damages against the landlord since approximately late 2006. Conducting a search of previous decisions made between the parties I note that in a decision made on October 4, 2007 the Dispute Resolution Officer made the following finding of fact:

"This matter comes before me after a somewhat long and convoluted history of disputes between the applicant tenant and the respondent landlord. In this respect, the tenancy began on or about February 2003. Since that time the parties have engaged in multiple hearings before residential tenancy arbitrators and dispute resolution officers. Additionally, the parties have engaged in litigation in the Supreme Court of British Columbia resulting in various orders by

Mr. Justice Leask (on preliminary applications) in Supreme Court action numbers SO73970 and SO73051 on August 2, 2007."

In a decision dated June 2, 2007 on file #198040 and #196905 a Dispute Resolution Officer made a similar finding:

"This tenancy started in February 2003. There is a written tenancy agreement and possibly two concurrent agreements. The materials filed by the parties indicate a tenancy agreement and a second document, a "House Lease," of same date. Neither of these documents was formally adduced into evidence during the hearing."

Both of these decisions were made based on submissions of the parties and have determined that the tenancy began in February 2003. The evidence presented in this application suggested that the tenancy began February 2004.

I find that the evidence of the parties is not reliable. Both parties have failed to provide copies of the tenancy agreement and the oral testimony is inconsistent with previous evidence made in prior hearings.

I find that the tenant has failed to support her application for compensation for loss or damage under the *Act*. The tenant has failed to substantiate her claim and all of her evidence is hearsay and not corroborated. The tenant's claims are speculative in nature and she has not established on the balance of probabilities that she has suffered any loss. In the absence of specific actions, dates and corroborating evidence I find that the tenant's application should be dismissed, without leave to re-apply.

Conclusion:

I dismiss the tenant's application for compensation due to loss or damage under the *Act*. The tenant's application, on the evidence provided, is without merit on the balance of probabilities.

Dated December 17, 2008.

Dispute Resolution Officer