# Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

## DECISION

Dispute Codes OPR, MNR, FF

Introduction

The two applications by the landlord were heard by conference call on August 11, 2010. The first application was heard at 11:00 A.M. and the evidence on that application showed that the same issues would arise in the later application held at 1:00 P.M. I determined that both matters should be heard together and I allowed the two proceedings to continue and be heard together at the time of the second application. After the hearing was concluded I received written submissions from the parties. The tenants provided written submissions on August 18. 2010. The landlord provided its reply on August 18, 2010.

Issues(s) to be Decided

Is the landlord entitled to orders for possession and monetary orders against the respondents?

Background and Evidence

The subject properties are two dwellings at an abandoned mine-site located on Crown land. One is a house described as the former mine manager's house. It is occupied by the respondents Mr. and Mrs. J.H. They have lived in the house since 1975. According to supplied documents Mr. and Mrs. J.H., pursuant to an agreement with the former holder of a Crown grant of the under-surface mineral rights, have acted as caretakers of the property in exchange for the right to occupy the house. They may have paid a modest rent from time to time. The second building is a former school house, now

converted to a residence. The respondents P.H. and C.M. have occupied it since in or about 1992. The respondents have maintained and made improvements to the respective dwellings during their occupancy. The respondents are named as owners on property tax assessment notices. They have paid the assessed taxes throughout their occupancies.

In 2008 the applicant obtained an assignment of the Crown grant of mineral rights. Both before and after the assignment to the applicant the respondents have made efforts to obtain fee simple title from the Crown to the dwellings and the land on which they are situated. Since acquiring the mineral claim the applicant has attempted to acquire the surface rights to the land. As part of its effort to acquire the surface rights the applicant brought proceedings under the Assessment Act to challenge the naming of the respondents as owners or occupiers on the property tax assessment rolls. I was provided with a copy of a December 14, 2009 assessment appeal decision. On the appeal the applicant contended that it should be identified as the holder or occupier of the Property. In the appeal decision the Panel Chair recounted the history of transfers of the mineral claim until its acquisition by the applicant. He also described the history of occupancy by the respondents. The Panel Chair commented that: “For the purposes of this appeal, I find that the buildings” (referring among others to the buildings occupied by the respondents) “are included within the Crown grant.” The Panel Chair denied the applicant's appeal; he determined that: “...as between (the applicant) as owner of the Mineral claim, and (the respondents), who have no registered or written interest in the Property but have actual physical occupation and control, (the respondents) are the paramount occupiers. Accordingly the assessment should be in the names of (the respondents).”

The applicant relied on the Panel Chair’s finding that the buildings are included within the Crown grant as confirming ownership of the buildings in the applicant. The applicant's position is that the respondents were tenants by agreement with former holders of the mineral claim, they paid monetary rent or provided services in lieu of

rent; they are therefore tenants under a tenancy agreement as defined by the Residential Tenancy Act and their status remains that of tenants.

The applicant has referred to correspondence between its counsel and officials with the provincial government's Integrated Land Management Bureau. In one of the communications an official commented that: “I conclude that the surface rights to the land belong to the government.” and: “I conclude that the buildings are the property of (the applicant).”

He also said that: “I conclude that (the respondents) do not have any specific rights to apply for the land that have priority over the rights held by (the applicant) as claim holder.” He went on to state his conclusion that the Bureau must accept an application from the applicant for the surface rights if he submitted one.

The applicant contends that he has acquired the buildings subject to existing tenancies and since the tenants have paid no rent, he is entitled to evict them. The applicant served the respondents with 10 day Notices to End Tenancy for unpaid rent or utilities. Each of the Notices was dated May 4, 2010 and claimed that the respondents have not paid rent that was due on May 1, 2010. The Notices demanded that the respondents move out of the rental units by May 20, 2010. In each application for dispute resolution the applicant requested an order for possession and a monetary order. The details of the dispute were described as: “None Payment of Rent” (sic).

The respondents have not applied to dispute the Notices to End Tenancy; they take the position is that there is no tenancy agreement between the applicant and the respondents and there is no tenancy relationship between the parties; the Notices to End Tenancy are void and this matter is not properly before the Residential Tenancy Branch.

Analysis and conclusion

The applicant has referred me to a finding that the buildings are included within the Crown grant and to a statement by an official with the Integrated Land Management bureau that the applicant is the owner of the buildings. The finding by the assessment appeal Panel Chair was specifically made for the limited purpose of determining what name should appear on property tax assessments. The applicant was unsuccessful on that appeal. The Panel Chair's finding was not a determination for all purposes that confirmed or established any rights to the buildings.

The remarks by an official at the Integrated Land Management Bureau cannot be taken to be a judicial determination as to the respective rights of the parties. The Bureau appears to have taken the position that it will not process the applicant's application for surface rights until the rights to possession of the buildings have been determined. The applicant has served Notices to End Tenancy and filed these applications for dispute resolution in order to end the respondents' occupancies of the buildings so his application to the Bureau to acquire the surface rights can proceed. It appears that the applicant is using these dispute resolution proceedings as a kind of "bootstrap" proceeding to resolve the dispute as to his rights to the land and buildings so that his application to purchase the land from the Crown can proceed.

The determination of the rights of the parties to the buildings and the curtilage requires consideration of the law with respect to the Crown grant and the surface rights, if any, that may pertain to it as well as relevant provincial legislation including the Land Act and the Mineral Tenure Act. It also involves a full consideration of the respondents' dealings with previous holders of the mineral claim and an inquiry to determine what right or interest in the land and buildings the respondents may have acquired as a consequence of those dealings and of their maintenance, improvements and tax payments over the years of their occupation.

Determination of those issues is outside of the scope of my jurisdiction under the Residential Tenancy Act. In my view, as suggested in a letter from counsel for the

respondents to the Integrated Land Management Bureau, these are issues that should be determined by the Supreme Court of British Columbia.

The applications are dismissed without leave to reapply.