



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes

For the tenant/applicant: CNR, ATT, FF
For the landlord/applicant: OPR, MNR, FF

Introduction

This hearing dealt with the parties' cross Applications for Dispute Resolution seeking remedy under the Residential Tenancy Act (the "Act").

The tenant/applicant applied to cancel a Notice to End Tenancy for Unpaid Rent, to allow access to the rental unit and to recover the filing fee paid for the application.

The landlord/applicant applied seeking an order of possession for unpaid rent, a monetary order and to recover the filing fee paid for the application.

The hearing was conducted via teleconference and was attended by the landlord/applicant and tenant/applicant and legal counsel. The legal counsel for the estranged spouse of the landlord also attended, although she had not formally entered an appearance into this dispute or requested to be added.

Prior to the hearing, the parties had submitted a substantial amount of documentary evidence, which included references to matters involving all three parties, the tenant, the landlord and the landlord's spouse, which were before the Supreme Court of British Columbia.

Therefore, at the outset of the hearing the issue of jurisdiction under the Residential Tenancy Act (the "Act") was explored as to the determination of whether or not the issues raised were substantially before the Supreme Court of British Columbia and whether I had jurisdiction to decide this dispute.

Further at the outset of the hearing, the legal counsel for the tenant/applicant requested that this hearing be adjourned so that all parties could submit written arguments.

Issues(s) to be Decided

1. Does the *Residential Tenancy Act* apply to this dispute and do I have jurisdiction to resolve this dispute?
2. Has the tenant/applicant established an entitlement to an order cancelling a Notice to End Tenancy, an order allowing access to the rental unit and recovery of the filing fee?
3. Has the landlord/applicant established an entitlement for an order of possession, a monetary order and recovery of the filing fee?

Background and Evidence

The tenant/applicant's legal counsel argued that the tenant had been granted an ownership interest in the residential property due to a significant outstanding debt said to be owed to him by the landlord. The legal counsel said this was affirmed by the Consent Order entered by the Supreme Court of British Columbia, submitted into evidence by the tenant/applicant, which would remove jurisdiction of the matters in dispute from the Residential Tenancy Branch.

The landlord/applicant denied that the Supreme Court of British Columbia had jurisdiction over this matter, that the tenant/applicant had not paid rent in three months and that he was entitled to an order of possession.

The legal counsel for the landlord's estranged spouse alleged that the landlord/applicant had colluded with the tenant/applicant to avoid the marital obligations between the landlord and his spouse.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that there was not enough testimony or evidence to resolve the issue of jurisdiction under the Residential Tenancy Act. I also find that the legal counsel for the landlord's spouse may make written submissions if she so desires.

This hearing was adjourned to allow the parties an additional two weeks to send written submissions to support their positions of whether or not the Residential Tenancy Act (the "Act") applies to this dispute.

The parties were instructed that the written submissions were due on or before November 17, 2011. I also instruct that any party sending written submissions to transmit a copy to all other parties.

The parties were informed during the hearing that this dispute may be decided upon written submissions only. Alternatively if a hearing is required to hear from the parties, this hearing will be reconvened to allow for a further participatory hearing.

Interim Conclusion

Upon receipt of the parties' written submissions, the tenant's being received on November 16, 2011, and the landlord's submission being received on November 15, 2011, I find the tenant submitted insufficient and inconclusive evidence to convince me that the Residential Tenancy Act (the "Act") did not apply to this dispute.

For instance the tenant cited the case of *Kittirath v. Doan, 2009 BSSC (CarLII)*, which I find is not relevant to the circumstances in the present case. In the *Kittirath* case, the dispute involved a written agreement for the sale of the property in question. I find in the instant case, there has been no written agreement for the sale of the property between the two parties involved. I find the matter of the builder's lien to be exclusive of any tenancy issues, more particularly the primary issue of whether a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") is invalid or supported by the evidence. I also cannot find that the builder's lien conferred ownership upon the tenant, which would exclude the Residential Tenancy Branch from hearing this dispute.

As I can find no exceptions to the Residential Tenancy Act (the "Act") in the written submissions of the parties, I find that I have jurisdiction to decide this dispute.

This hearing on the merits of the applications is adjourned to the date specified in the enclosed Notice of Adjourned Hearing, after which a final Decision will be rendered as to both applications.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 24, 2011.

Residential Tenancy Branch