Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

This matter dealt with an application by the Tenant to amend a Decision and Order issued on November 16, 2011 in other dispute resolution proceedings by adding a new party as a Landlord.

The Tenant said he served the Respondent with the Application and Notice of Hearing (the "hearing package") on December 22, 2011 by posting a copy of it to the door of her residence. The Tenant said he believes this is the Respondent's residence because it is the address registered with the Land Title office for the rental property and he recently attended the residence and she resided there. Section 89(1) of the Act says that this kind of application must be served on the Respondent either in person or by registered mail. Only an application for an Order of Possession may be served by posting it on the door of a Party's residence. However, for the reasons, set out below, I find that there are no grounds for granting the Tenant's application. Consequently, although I find that the Respondent has not been served with the Tenant's hearing package as required by s. 89 of the Act, I also find pursuant to s. 71 of the Act that she has been sufficiently served for the purposes of the Act and the hearing proceeded in the Respondent's absence.

During the hearing, the Tenant's advocate claimed that the Tenant was also seeking in this matter compensation for aggravated damages however the Tenant's application did not include a claim for that relief.

Issue(s) to be Decided

1. Is the Tenant entitled to amend a previously issued Decision and Order by adding a new Party to them?

Background and Evidence

On November 15, 2011, I conducted a hearing into applications between the Tenant and the Respondent's spouse, G.T. who was named as the Landlord. The Tenant named G.T. and another tenant of the rental property on his applications as "Landlords." In a decision I issued on November 16, 2011, I found that the other tenant of the rental

property was not a Landlord as defined by s. 1 of the Act. The Landlord, G.T., (in those proceedings) did not attend the hearing and his application was dismissed.

The Tenant's advocate claimed that he conducted a Land Title Search of the rental property on December 13, 2011 and discovered that the Respondent in this matter was the sole registered owner of that property. The Tenant's advocate argued that G.T. conspired with his spouse (L.T., the Respondent in this matter) to deceive the Tenant as to who was the correct Landlord. In particular, the Tenant admitted that he was aware that G.T. was married but argued that throughout the tenancy, G.T. referred to the rental property as "his property" and entered into a tenancy agreement in his name alone. Consequently, the Tenant's advocate argued that G.T. misled the Tenant into believing that he was the sole owner of the rental property. G.T. and his advocate, however, could not recall if G.T. had ever claimed to be the sole registered (or legal) owner of the rental property. The Tenant's advocate also argued that G.T. was not a Landlord as defined under the Act because he was not the owner of the property.

The Tenant's advocate argued in the alternative, that G.T. had a duty of care to the Tenant to advise him that he was not the registered owner of the rental property but rather acting as an agent for the owner of the rental property. The Tenant's advocate could not cite any statutory authority or case law for this proposition but argued generally that this duty fell under "negligence law."

Analysis

I find that there is no authority under the Act or at law to grant the relief sought by the Tenant in these proceedings. The Tenant did not name the Respondent in this matter as a Party in the previous proceedings that were held on November 15, 2011 and as a result, she did not participate in those proceedings or have an opportunity to respond to the Tenants' claims. Once those proceedings concluded and a decision was issued on the merits of the Parties' respective applications, it was no longer open to either of the Parties to amend their respective applications to add a party.

The Tenant's advocate argued that had the Tenant not been misled by G.T. into believing he was the owner of the rental property, he would have included his spouse, L.T. as a party on his applications in the previous proceedings. The Tenant's advocate argued that it was also for this reason that he did not conduct a Land Title search to confirm the legal owner of the rental property prior to filing the Tenant's application for dispute resolution. For these reasons, the Tenant's advocate argued that the decision dated November 16, 2011 was obtained by fraud. However I find that this is a matter that must be dealt with by way of a ***Review under s. 79 of the Act***. Section 80 of the Act says an application for Review (of a Monetary Claim) must be brought by a party within 15 days after receiving a copy of the decision, however a Party may apply for leave to file a Review application late if they can satisfy the criteria for doing so.

The Tenant's advocate also argued that he should be allowed to amend the decision and order dated November 16, 2011 on the grounds that G.T. was not a Landlord as defined by the Act because he was not the owner. However, s. 1 of the Act says as follows:

> "a **Landlord** includes any of the following,
>
> (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
> (i) permits occupation of the rental unit under a tenancy agreement, or
> (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
>
> (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
>
> (c) a person, other than a tenant occupying the rental unit, who
> (i) is entitled to possession of the rental unit, and
> (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit; and
>
> (d) a former landlord, when the context requires this."

From this definition, it is clear that a Landlord is not restricted to the owner only but may also be an agent or other person acting on behalf of the owner or on behalf of the owner's agent, as the case may be. The Tenant did not dispute in the previous proceedings or in these proceedings that all of his dealings throughout the tenancy were with G.T.

The Tenant's advocate also argued that G.T. had a duty of care to disclose to the Tenant that he was not the registered (or legal) owner of the property but rather was acting on behalf of the owner. The Tenant's advocate provided no authority in support of this proposition and I am not aware of any under the *Residential Tenancy Act* or at common law. It is common practice especially in multi-unit rental buildings for owners to engage the services of property management firms or others to deal with tenants on their behalf and not to disclose who the registered owner of the property is. This is part of the reason that the definition of a Landlord under the Act is so broad.

In any event, if the Tenant's advocate believes that the previous proceedings should be reconvened and L.T. added as a Party because G.T. is not a Landlord as defined by the Act or because he had a duty to disclose he was not the registered owner, he may also apply for ***judicial review*** to the Supreme Court of British Columbia (*but only if he has applied for and been denied that relief on a Review application under s. 79 of the Act*).

On a procedural note, RTB Rule of Procedure 8.7 states as follows:

> "*The Dispute Resolution Officer may give directions to a party, to a party's agent or representative, a witness, or any other person in attendance at a dispute resolution proceeding who presents rude, antagonistic or inappropriate behaviour. A person who does not comply with the Dispute Resolution Officer's direction may be excluded from the dispute resolution proceeding and the Dispute Resolution Officer may proceed with the dispute resolution proceeding in the absence of the excluded party*."

During the hearing, I cautioned the Tenant's advocate a number of times about his inappropriate conduct. In particular, on a number of occasions, the Tenant's advocate interrupted the evidence of the Tenant and exclaimed that the Tenant "did not know what he was talking about," "that he had an annoying tendency to ramble," and that "he would give the evidence instead." I cautioned the Tenant's advocate that he had engaged in similar conduct during the hearing on November 15, 2011 and instructed him to stop. Notwithstanding the Tenant's protests that he wanted an opportunity to speak and my instructions that I wanted to hear the Tenant's evidence, the Tenant's advocate continued to interrupt the Tenant's evidence. Following the Tenant's evidence, I then asked the Tenant's advocate if he had anything further to add and he exclaimed that he couldn't say because "he didn't bother to listen to the Tenant's evidence."

The Tenant's advocate also became antagonistic and rude to me when I asked him for his authorities for various propositions he advanced. The Tenant's advocate continually interrupted my attempts to ask questions and refused my requests to listen to my instructions. The Tenant's advocate had become so hostile and disruptive after approximately 30 minutes of hearing that it was impossible to continue with him present during the proceedings and as a result, I advised him that he would have to leave the conference call.

Conclusion

The Tenant's application is dismissed without leave to reapply. 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: January 12, 2012.

Residential Tenancy Branch