



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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.

At the outset of the hearing, the tenant's legal counsel again raised the issue of jurisdiction under the Residential Tenancy Act for these applications.

Additionally, the legal counsel stated that the property in question had been for sale and currently has an accepted offer.

The hearing proceeded with arguments both for and against finding jurisdiction under the Act.

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

This tenancy began in February 2008 and monthly rent is \$2,100.00.

I heard undisputed testimony that the tenant obtained a builder's lien on the residential property, through a consent decree in the Supreme Court of British Columbia, signed by the landlord, on August 3, 2011, in the amount of \$406,193.51.

I also heard testimony that the landlord's estranged spouse had disputed the lien and filed a stay of action in the Supreme Court of British Columbia through proceedings pertaining to a pending divorce action.

I heard testimony that the landlord's estranged spouse has consented to the lifting of the stay in order to accomplish the sale of the property, with the proceeds being deposited into a trust account, pending resolution of the divorce action.

The tenant's legal counsel argued that this dispute falls outside the jurisdiction of the Residential Tenancy Act as the Supreme Court of British Columbia has jurisdiction over the residential property in question.

In support of this argument, the legal counsel pointed to the *Land Title Act*, which he stated gave the tenant an ownership interest in the property.

In response, the landlord stated that he was the registered owner and argued that the Residential Tenancy Act did apply to this dispute.

Analysis

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

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

Section 58 (2) (c) of the Residential Tenancy Act states, in part, that the director must determine the dispute unless the dispute is linked substantially to a matter that is before the Supreme Court.

Having reviewed the testimony and the evidence, I decline to determine this dispute as I find that the question of the residential property and its disposition is linked substantially to issues and matters before the Supreme Court, due to the Supreme Court's orders and directions regarding the property.

Alternatively I find that I likewise would have no authority to decide this dispute as I do not find the Residential Tenancy Act applies.

Residential Tenancy Policy Guideline 27: Jurisdiction, under the heading Excluded Jurisdiction, states that a tenancy agreement is a transfer of an interest, which is the right to possession of the residential premises. If the tenant takes an interest in the land and buildings which is higher than the right to possession, such as part ownership of the premises, then a tenancy agreement may not have been entered into. In such a case the RTB may again decline jurisdiction because the Acts would not apply.

Based on the above considerations, I find the preponderance of evidence indicates that the interest the tenant had in the property is higher than that of a right to possess as conveyed under a tenancy agreement and the nature of the relationship between the parties now to be more than that of a landlord and tenant.

In reaching this conclusion, I was influenced by the *Land Title Act* of British Columbia. Under “Definitions, Interpretations and Application” in the Act, the definition of “owner” is listed as, in part, “a person registered in the records.....of a charge on land...”

As the landlord consented to the tenant’s lien of \$406,193.51 on the property, through Consent Order in the Supreme Court, I find that the tenant had a charge on the land and therefore falls under the classification of “owner” under *the Land Title Act*.

In light of the above, I decline to find jurisdiction to resolve this dispute.

Conclusion

I do not find the *Residential Tenancy Act* applies to this dispute and I have declined jurisdiction.

The parties are at liberty to seek the appropriate legal remedy to this dispute.

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: February 21, 2012.

Residential Tenancy Branch