



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes: O

Introduction

In response to applications by both parties, a dispute resolution officer issued a decision by date of June 8, 2009. In summary, the tenant's application was dismissed and an order of possession was issued in favour of the landlord. Subsequently, the tenant made application to the Supreme Court of British Columbia for Judicial Review and, thereafter, to the Court of Appeal for British Columbia. In the result, the question of whether the landlord is entitled to an order of possession was remitted to the Director for determination. This hearing was convened on March 1, 2012 in order to address preliminary matters.

PRELIMINARY MATTERS:

The Manner in Which the Matters will be Heard

Counsel for the tenant requested a face-to-face hearing. Counsel for the landlord stated a preference for hearing by conference call. The vast majority of Branch hearings are conducted by conference call, and the original hearing in this matter was conducted by conference call. There is no reference in the dispute resolution officer's decision, the Judgement of the Supreme Court of British Columbia or the Judgment of the Court of Appeal for British Columbia of either party being disadvantaged in any way as a result. I find that there is insufficient evidence that the tenant would be prejudiced by having the matters dealt with in a hearing conducted by conference call. The request for a face-to-face hearing is therefore declined.

Documentary Evidence to be Considered

The parties agree that the documentary evidence before the dispute resolution officer in 2008, should also be before the dispute resolution officer at the new hearing.

"New" Evidence - Exchange of Documents / Provision of Documents to the Branch

RULE 3 of the Branch Rules of Procedure speaks to “Serving the Application and the Applicant’s Evidence,” and RULE 4 addresses “Serving the Respondent’s Evidence.” Pursuant to discussion between counsel at this hearing, it was agreed that tenant’s counsel will provide any “new” documentary evidence to landlord’s counsel by not later than 4:00 p.m., Monday, March 12, 2012. In turn, it was agreed that landlord’s counsel will provide any response and/or “new” documentary evidence to tenant’s counsel by not later than 4:00 p.m., Monday, March 19, 2012.

Copies of all “new” documentary evidence that may be exchanged between counsel must be provided to the Branch by no later than five (5) days before the date of the new hearing. Prospective “new” documentary evidence discussed during this hearing included copies of affidavits submitted during the judicial review / appeal process, in addition to a written submission by the tenant.

Recording of the Hearing & Associated Costs

Landlord’s counsel requested that the new hearing be recorded. In this regard the attention of the parties is drawn to the provisions set out in RULE 9 of the Branch Rules of Procedure which addresses “Recording of a Dispute Resolution Proceeding,” as follows:

9.1 Private recording

Private audio, photographic, video or digital recording of the dispute resolution proceeding is not permitted

9.2 Official recording

A party requesting an official recording by a court reporter must provide written notice stating the reasons for the request, to the other party and to the Residential Tenancy Branch at least two (2) business days in advance of the dispute resolution proceeding. A Dispute Resolution Officer will determine whether to grant the request and will provide written reasons, if requested.

If permission is granted for an official recording of the dispute resolution proceeding by a court reporter, the party making the request must:

- (a) make all necessary arrangements for attendance by a court reporter and court reporter's necessary equipment;
- (b) pay the cost of the court reporter's attendance at the dispute resolution proceeding, and the recording; and
- (c) must provide all parties with copies of the recording, transcript, or both, as ordered by the Dispute Resolution Officer.

Scheduling Date & Time for the New Hearing

Tenant's counsel declared a preference for one (1) full day to be set aside. Landlord's counsel indicated a leaning toward one (1) half day. The month of April 2012 is agreeable to both.

I find that one (1) full day will be set aside in order to help ensure timely completion of the hearing on one occasion, as opposed to possible delay arising from adjournment and re-scheduling of a second new hearing. The parties are reminded of the Judgment of the Court of Appeal for British Columbia which directs that the focus of a new hearing be limited to three (3) questions:

- a) Was there a monthly tenancy between the 2006 and 2008 Leases?
- b) If so, what were the terms of the monthly tenancy?
- c) Did the 2008 Lease operate to validly terminate the monthly tenancy?

Branch staff will contact the offices of both counsel in order to determine a mutually convenient date for the new hearing in April 2012. Thereafter, under separate cover the Branch will send new notices of hearing to both counsel.

Settlement

While no mutual appetite for settlement of the dispute was identified during this hearing, the parties are nevertheless reminded of provisions set out in section 63 of the Act which speaks to the **Opportunity to settle dispute**:

- 63(1) The director may assist the parties, or offer the parties an opportunity, to settle their dispute.
- (2) If the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or order.

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: March 01, 2012.

Residential Tenancy Branch