



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, CNC, MNDC, OLC, FF

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for the filing fee. The tenant applied for an order to cancel the notice to end tenancy and for a monetary order for compensation.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Upon consideration of the documentary evidence, a preliminary issue was raised and repeated at the hearing. The tenant was of the position that I did not have jurisdiction to resolve this dispute.

Issues to be decided

Does the *Residential Tenancy Act* apply to the parties and do I have jurisdiction to resolve this dispute? Is this dispute linked substantially to a matter that is before the Supreme Court?

Background and Evidence

The rental unit consists of an apartment located in a building complex. The tenancy started in June 2011. The tenant stated that at the start of the tenancy there was a frame on the patio that had an awning attached to it. She stated that the landlord agreed to change the awning and maintain it.

The landlord did not dispute the tenant's testimony. She added that shortly after, the strata notified her to have the awning removed because it did not comply with the strata by laws. After its removal, the tenant put up a white tent. The tenant stated that she did not hear back from the strata until she replaced the white tent with the current gazebo.

The landlord stated that the tenant is in contravention of the strata by laws and the local city bylaws and therefore served the tenant with a notice to end tenancy for cause.

The tenant has disputed this notice on the grounds that she is questioning the legality of the strata and city by laws and states that she is not in breach of the city building or zoning by laws. The tenant has filed a petition to the Supreme Court of BC seeking an order declaring that the tenant's patio gazebo is not in breach of any Strata or City bylaws.

Analysis

Section 58.2.c of *Residential Tenancy Act* addresses the jurisdiction of the *Residential Tenancy Act*. This section states that if a dispute is linked substantially to a Supreme Court action, then the arbitrator may decline jurisdiction

Based on the sworn testimony of both parties and the documentary evidence filed by both parties, I find that this dispute is linked substantially to a matter that is before the Supreme Court of BC. Therefore I find that I do not have jurisdiction in this matter.

Conclusion

The applications of both parties are dismissed with leave to reapply pending the decision of the Supreme Court of BC.

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: September 06, 2012.

Residential Tenancy Branch