



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O (Other)

Introduction

It appears that since 1976, through a series of commercial style leases, the respondent Greater Vancouver Regional District ("GVRD") has rented out a parcel of land in Belcarra to the applicant society. On that parcel are located seven cabins. The leases, including the current lease made in March 2006, have all contained a covenant that the applicant will use the premises for residential purposes only.

The parties are in a dispute. The applicant society makes this application seeking "a determination of jurisdiction" that the relationship between the parties is governed by the *Residential Tenancy Act*. (the "Act"). The respondent GVRD also wishes that I make that determination. It has brought a petition against the respondent in the Supreme Court of BC regarding this lease and considers that it would be quicker and cheaper to have a Residential Tenancy arbitrator make a jurisdictional decision than a Supreme Court Justice.

Issue(s) to be Decided

The first and, in my view the determinative issue, is whether or not a Residential Tenancy arbitrator can make such a determination in these circumstances.

Background and Evidence

The Introduction section above sets out the necessary background.

The applicant has filed a portion of the first lease in 1976 and a portion of the current lease. Additionally a water license agreement and correspondence were filed.

Analysis

As discussed at hearing, there are a number of concerns.

It is not clear that the *Act* authorizes the Director (and therefore an arbitrator appointed by her) to make a jurisdictional determination, a declaration, in the absence of an identifiable dispute. It should be noted that counsel for the applicant society said that his client had tried to make an application under the *Act* to challenge a lease termination notice but the application was not accepted.

Counsel appear to agree that the jurisdictional question is a question of law and fact but the facts submitted are only the documents referred to above. A history of the use of the property and interaction or participation of the parties in regard to that use would appear to me to be something the adjudicator would need to know.

Neither side submitted legal argument or appeared to be aware of possibly relevant case law, particularly *Henricks v. Hebert*, (1998) BCSC, PG.Reg. 02527, 1998 CanLII 1909.

However, s. 58(2)(c) of the *Act* is, in my view, determinative. It provides,

58 (1) Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that
 - (i) are required or prohibited under this Act, or
 - (ii) relate to
 - (A) the tenant's use, occupation or maintenance of the rental unit, or
 - (B) the use of common areas or services or facilities.

(2) Except as provided in subsection (4), if the director receives an application under subsection (1), the director must determine the dispute unless

- (a) the claim is for an amount that is more than the monetary limit for claims under the Small Claims Act,
- (b) the application was not made within the applicable period specified under this Act, or
- (c) **the dispute is linked substantially to a matter that is before the Supreme Court.**

(3) Except as provided in subsection (4), a court does not have and must not exercise any jurisdiction in respect of a matter that must be submitted for determination by the director under this Act.

(4) The Supreme Court may

- (a) on application, hear a dispute referred to in subsection (2) (a) or (c), and
- (b) on hearing the dispute, make any order that the director may make under this Act.

(my emphasis)

The same parties are now before the court regarding the same issue, including the question of whether the relationship is a residential or commercial tenancy. The court is a much higher authority than a Residential Tenancy arbitrator. While the latter may be quicker or less costly, the parties are, in essence, asking a Residential Tenancy arbitrator to decide whether the Supreme Court of BC has jurisdiction to hear a matter that is presently before it.

For this reason I decline to consider the jurisdictional question raised by this application.

Conclusion

The tenant's application is dismissed.

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 22, 2014

Residential Tenancy Branch

