



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, RP

Introduction and Preliminary Matters

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for a monetary order for money owed or compensation for damage or loss and an order requiring the landlord to make repairs to the rental unit.

The tenant, the landlords, the landlord's legal counsel, and their witness, their former legal counsel, attended, the hearing process was explained. It was also necessary to address some preliminary matters at the outset of the hearing, based upon the evidentiary submissions and the tenant's attempt to amend her application.

The tenant's application was originally filed on September 25, 2014; on April 20, 2015, the tenant submitted an amended application, increasing her monetary claim from \$8000.00 to \$20,000.00.

Section 2.11 of the Dispute Resolution Rules of Procedure (Rules) requires that a copy of the amended application be served on each respondent, the landlords in this case, so that they receive it at least 14 days before the scheduled date for dispute resolution hearing. In this case, the tenant filed an amended application 10 days prior to the hearing. For this reason and due to the principles of natural justice and administrative fair play, I decline to accept the tenant's amended application.

The hearing proceeded on the tenant's original application for a monetary order in the amount of \$8000.00 and her request for repairs to the rental unit.

At this point, the matter of jurisdiction was discussed, due to the written submissions of the landlords claiming that any issues raised in the tenant's application had been decided by the Supreme Court of British Columbia.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Does the *Residential Tenancy Act* apply to this dispute?

If so, is the tenant entitled to a monetary compensation and an order requiring the landlords to make repairs to the rental unit?

Background and Evidence

According to the written tenancy agreement submitted by the landlords, this tenancy commenced on March 15, 2014, with monthly rent being \$1600.00.

In brief, the written evidence shows that the parties have been in at least one previous dispute resolution hearing due to the tenant's application seeking cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), for a reduction in monthly rent, for an order requiring the landlord to make repairs to the rental unit, and for a monetary order for money owed or compensation for damage or loss. Besides the Notice, the other issues stemmed from an apparent flood due to a burst hot water tank.

In a Decision dated August 18, 2014, by another Arbitrator, the matter of the tenant's monetary claim was severed, with leave to reapply, and a settlement of all other issues was recorded.

Subsequently the tenant brought forth a matter before the Supreme Court of British Columbia against the property management company representing the landlords at that time. The action was for a stay of the landlords' order of possession for the rental unit.

On November 24, 2014, the tenant signed a settlement agreement between her and the landlords and their agents, agreeing to sign the attached Court Order putting the court proceedings (Supreme Court) to an end. Included in the settlement agreement was a term which stated that the settlement conclusively resolved all Residential Tenancy Branch issues and Court proceedings between the parties to date.

The attached Supreme Court Order was a Consent Dismissal Order, signed by the tenant, which dismissed the pending action against the respondent in that matter, the property management company representing the landlords. The Consent Dismissal Order, signed by a judge of the Supreme Court on November 27, 2014, was also signed by the landlords' former legal counsel, the witness for this hearing. The former legal counsel also prepared the settlement signed by the tenant on November 24, 2014.

The witness, the landlords' former legal counsel, "DM" also was called into this hearing to provide background leading to the settlement agreement of November 24, 2014. DM submitted that the tenant's legal counsel at the time decided not to represent the tenant any longer, at which time DM began dealing directly with the tenant to resolve the pending Supreme Court and RTB cases. According to the DM, the tenant stayed in his office for at least 3 hours making revisions to the settlement agreement, before finally agreeing to the terms as recorded. DM submitted that he was aware of the RTB application, the present application, at that time, and the purpose of the settlement was to conclude the pending Supreme Court action as well as the pending RTB action.

Tenant's response-

The tenant denied that her application, the present application filed September 25, 2014, was included in the settlement agreement of November 24, 2014. The tenant submitted that the term "issues" was the problem.

Analysis and Conclusion

Before proceeding to examine and consider the merits of the tenant's application, I must determine whether this application is under the jurisdiction of the *Residential Tenancy Act*.

Section 51(2)(c) of the Act states that the director must determine the dispute contained in an application for dispute resolution unless the dispute is linked substantially to a matter that is before the Supreme Court.

After reviewing the Supreme Court Consent Dismissal Order of November 27, 2014, signed by the tenant and which was based upon the recorded settlement of November 24, 2014, between the parties, I have determined that the issues in the tenant's application were matters before the Supreme Court of British Columbia at that time. I reached this conclusion based upon the term, number 9, in the settled agreement of the parties, signed by the tenant, which states the settlement conclusively resolved all Residential Tenancy Branch issues between the parties to date. As the tenant's

application here was an RTB issue between the parties as of the date of filing, or September 25, 2014, I find this settled term encompasses and includes this present application.

Therefore, I decline to find jurisdiction to resolve 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: May 4, 2015

Residential Tenancy Branch

