



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NWI Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC, MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a 1 month notice to end tenancy for cause / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. Both parties were represented at the hearing by Legal Counsel ("Counsel").

Issue(s) to be Decided

- Is the dispute linked substantially to a matter that is before the Supreme Court?
- Does the subject tenancy fall within the jurisdiction of the Act and Regulation?
- If the subject tenancy falls within the jurisdiction of the Act and Regulation, is the tenant entitled to the remedies sought under that legislation or the tenancy agreement?

Preliminary Matters

By letter dated July 20, 2015, tenant's Counsel requested that the Residential Tenancy Branch (the "Branch") adjourn this hearing scheduled to commence at 11:30 a.m. on July 22, 2015. Counsel seeks adjournment in order to "properly respond" to a Written Submission he claims to have received earlier on that same date from Landlord's Counsel. The Written Submission concerns questions around the constitutional and / or statutory jurisdiction of the Branch over the matters in dispute. Tenant's Counsel states that landlord's Counsel has refused consent to the request for adjournment.

At the outset of the hearing, both Counsel, but principally tenant's Counsel spoke to some of the issues raised in the Written Submission referenced above. Tenant's Counsel took the position that an adjournment may also facilitate resolution of the dispute by providing an opportunity for the Supreme Court to determine jurisdiction. Further, tenant's Counsel raised the question of the tenancy's status pending resolution of jurisdictional and other issues in dispute.

Tenant's Counsel's request for adjournment is declined for reasons that are set out in the Analysis section of this Decision. The status of the tenancy is also addressed in that section.

Background and Evidence

The unit which is the subject of this dispute is variously referred to in the documentary evidence before me as a "vessel," "type of boat," "Barge Livaboard," and "float home." Pursuant to a Long Term Moorage Contract / Agreement ("Moorage Agreement"), the tenant rents a "moorage slip" at a marina for the term commencing April 01, 2015 and ending March 31, 2016. Monthly rent including 5% GST is \$945.00 (\$900.00 + \$45.00).

Pursuant to section 40 of the Act which addresses **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy dated May 20, 2015. The notice was served by way of posting to the unit door on that same date. A copy of the notice was submitted in evidence. The date shown by when the tenant must vacate the site is June 24, 2015, and the reason identified on the notice in support of its issuance is as follows:

Rental unit / site must be vacated to comply with a government order.

The tenant filed an application for dispute resolution on May 28, 2015, in which she seeks cancellation of the notice, certain compensation and recovery of the filing fee. The tenant has not presently vacated the moorage slip.

In association with the broad circumstances surrounding this dispute, in April 2015 the landlord started a civil claim against the tenant in the Supreme Court of British Columbia (the "Court"), and in May 2015 the tenant responded. Pertinent documentary evidence before me includes, but is not limited to, Notice of Application, Notice of Civil Claim, Application Response, Response to Civil Claim, in addition to Written Submissions and Affidavits submitted variously and respectively by Counsel representing the parties.

Analysis

Section 51 of the Act addresses **Determining disputes**, and provides in part:

51(2) Except as provided in subsection (4), if the director receives an application under subsection (1), the director must determine the dispute unless
(c) the dispute is linked substantially to a matter that is before the Supreme Court.

Having reviewed the documentary evidence, I find that the dispute brought to the Branch by way of the tenant's application "is linked substantially to a matter that is before the Supreme Court." Accordingly, pursuant to section 51(2)(c) of the Act I decline to determine the dispute, and I dismiss the application with leave to reapply. In the meantime, the subject tenancy continues uninterrupted pending resolution of jurisdictional and other issues in dispute.

Finally, the attention of the parties is drawn to section 51(4)(b) of the Act which provides as follows:

51(4) The Supreme Court may

(b) on hearing the dispute, make any order that the director may make under this Act.

Conclusion

The application is hereby dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: July 22, 2015

Residential Tenancy Branch

