



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS, CNC, FF, LRE, MNDC, O, OLC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on August 25, 2015. I find that the Amended Application for Dispute Resolution was served on the landlord on September 8, 2015.

Background and Evidence

There is a dispute between the parties as to whether the tenant is the corporation or the individual (who represents the corporation). The tenant relies on a form of agreement that provides for a fixed term tenancy agreement between the FCC as tenant (the corporation) and the landlord. It provides that the tenancy began on July 10, 2015, continues until July 31, 2018. The rent is set at \$3800. The tenant paid a security deposit of \$1900. The landlord takes the position that this form of agreement is fraudulent. The landlord refers to another form of tenancy agreement and testified she entered into the tenancy agreement with the individual (who is representing the corporate tenant).

The tenancy relationship has broken down. The landlord testified the tenant is in breach of the tenancy agreement and the Strata Bylaws used the rental unit as a Air BnB. The landlord took steps to regain possession of the rental unit. The tenant testified the landlord's action have been illegal.

In late August or early September the individual representative of the corporate tenant commenced an action in the Supreme Court of British Columbia. The tenancy was terminated at the end of September 2015.

The Amended Application for Dispute Resolution filed by the Tenant is set out in Schedule "A" to the Amended Application for Dispute Resolution. Much of what is set out is not longer relevant. However, it does include monetary claims including the following:

- The tenant is claiming damages for hotel accommodation and rental refund to sub tenants (lost revenue
- The Tenant seeks damages for the landlord failure to provide parking spaces
- On the first day of the hearing the tenant presented evidence relating to other damage that he has suffered.

The landlord filed an application in Supreme Court of British Columbia and obtained leave to file a Counterclaim against the individual representative in which included the following claims: :

- The individual representative was at all material times the intended tenant.
- The rental unit was rented for the personal use of the individual representative and his wife and was not to be used for commercial purposes.
- The tenant has breached the lease by not residing in the Rental unit and instead running a commercial business charging customers up to \$468 per day.
- The commercial short-term stay business breached the strata corporation bylaws.
- Loss of rent for September.
- An accounting and order of equitable restitution and disgorgement of any and all benefits obtained by the Tenant
- Punitive damages
- Etc.

The parties stated that discoveries have been set for January 2016.

Preliminary Matter:

The hearing was initially set for October 16, 2015. The matter was adjourned as there was not sufficient time for all of the evidence to be presented. At the start of the hearing on December 21, 2015 the landlord stated she seeks an order that the Residential Tenancy Branch decline jurisdiction under section 58(2) of the Residential Tenancy Act as this dispute is like substantially to the matter that is before the Supreme Court of

British Columbia. The tenant objected as the landlord had not provided him with documents. However, he acknowledged that he does have copies of the Supreme Court of British Columbia documents where the landlord was permitted to file a Counterclaim against the individual even though such a Counterclaim is late.

Issue(s) to be Decided

The issue to be decided is whether the Residential Tenancy Branch should decline jurisdiction under section 58(2) of the Residential Tenancy Act as this dispute is linked substantially to the matter that is before the Supreme Court of British Columbia.

I determined that the fact that I have heard some evidence in this matter on October 16, 2015 does not preclude me from hearing the landlord's application to decline jurisdiction.

Determining disputes

58 (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.

Policy Guideline #27 provides as follows:

“8. POWER OF THE RTB

The power and authority of the RTB is derived from the Legislation. The dispute resolution process does not create a court and so the RTB does not have inherent powers arising under the common law which are possessed by a judge. For example, the RTB does not have jurisdiction in "equity" to grant some forms of relief that a court may grant.

Similarly, the monetary limit of the RTB's jurisdiction is limited to the same amount as the provincial court, the sum of \$25,000 as of the date of the guideline. A claim for money that exceeds that amount must be heard in Supreme Court. An applicant, however, may abandon part of a claim to come within the jurisdictional limits of the RTB. In addition, the RTB does have the

power to hear a claim for the return of goods the value of which exceeds \$25,000.

The provincial court does not have jurisdiction over residential tenancy disputes except in respect of enforcement of monetary orders issued by the RTB. The Supreme Court, however, may by order, assume jurisdiction over a residential tenancy matter, in which case the RTB loses jurisdiction over that dispute. If the dispute is linked substantially to a Supreme Court action then the RTB may decline jurisdiction.”

After carefully considering the evidence and submissions presented at the hearing I determined that it was appropriate to decline jurisdiction as this dispute is substantially linked to a matter that is before the Supreme Court of British Columbia for the following reasons::

- The issue as to whether the tenant is the individual representative or the corporation is a critical issue before the Supreme Court of British Columbia. The Supreme Court of British Columbia will be required to make this determination as an integral part of its decision. This is an integral part of the matter before me as the corporation is seeking a monetary order against the landlord. Such an order would not be appropriate if the individual is the tenant. In my view it would be inappropriate for an arbitrator to make this determination where the matter is a critical issue before the Supreme Court.
- The matter before the Supreme Court is active. The parties indicated discoveries are set for January.
- A second major issue involves whether the individual tenant breached the tenancy agreement and if so whether any profits made should be disgorged. This involves the exercises of equitable jurisdiction which an arbitrator does not have. It is appropriate to have this matter considered at the same time the tenant’s monetary claim is considered as it may be that setoffs are appropriate..
- The basis of the tenant’s monetary claim is the landlord breached the tenancy agreement. This is substantially linked to whether the tenant breached the tenancy agreement which is before the Supreme Court of British Columbia.
- The dispute between the parties has involves high handed action on both sides. The landlord has claimed punitive damages in its Counterclaim. An arbitrator does not have the jurisdiction to award punitive damages.
- The tenant submitted that the Master did not make an order that the Supreme Court was seized of all of these matters. In my view this does not prevent an arbitrator from making a decision declining jurisdiction.

- In my view it is not appropriate in this situation to the parties to split their case into two forums.

Determination and Orders:

As a result I determined the dispute before me is substantially linked to a matter that is before the Supreme Court of British Columbia and I decline to hear the matter.

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: December 21, 2015

Residential Tenancy Branch

