



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE GLENAYRE REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67.

The landlord did not attend this hearing, although I waited until 1140 in order to enable the landlord to connect with this teleconference hearing scheduled for 1100. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was accompanied by her spouse.

The tenant testified that she served the landlord with the dispute resolution package on 22 January 2016 by leaving the package with an agent of the landlord (the receptionist at the landlord's place of business). On the basis of this evidence, I am satisfied that the landlord was served with the dispute resolution package pursuant to section 89 of the Act.

Preliminary Issue – Scope of Application

This tenancy is the subject of four separate applications by the tenant:

- the January Application;
- this application (the First March Application)
- the Second March Application; and
- the September Application.

The file numbers for these hearings are noted on the covering page to this decision.

The tenant filed the January Application on 9 November 2015. The tenant's January Application was to cancel a 10 Day Notice served on or about 5 November 2015 and for \$25,000.00 in compensation. The tenant's January Application seeks compensation for "punitive damages for gross hardship and stress unnecessarily."

In a decision dated 13 January 2016, the arbitrator for the January Application found that the tenant's monetary request was not related to the tenant's application to cancel the 10 Day Notice. Pursuant to rule 2.3 of the *Residential Tenancy Branch Rules of Procedure* (the Rules), that arbitrator exercised her discretion to dismiss that portion of the tenant's claim with leave to reapply.

On 22 January 2016 the tenant filed the First March Application and the September Application.

The First March Application seeks to cancel the 10 Day Notice served 20 January 2016 and \$25,000.00 in compensation. The First March Application seeks compensation for "punitive damages" for:

- gross hardship and stress unnecessarily;
- harassment;
- unlawful access;
- costs; and
- other: to be determined.

11 February 2016 the tenant filed the Second March Application. The Second March Application seeks to cancel a 10 Day Notice and \$25,000.00 in compensation. The Second March Application seeks compensation for "harassment".

The September Application seeks \$25,000.00 in compensation. The September Application seeks compensation for "punitive damages" for:

- gross hardship and stress unnecessarily;
- harassment;
- unlawful access;
- costs; and
- other: to be determined.

The tenant has pleaded essentially the same claim for compensation totaling \$75,000.00 in three current files.

Rule 2.9 of the Rules prohibits an applicant from dividing his or her claims. Further, pursuant to paragraph 58(2)(a) of the Act, I do not have jurisdiction to adjudicate claims greater than that permitted by the *Small Claims Act*, RSBC 1996, c 430. The limit is prescribed in the *Small Claims Court Monetary Limit Regulation*, BC Reg 179/2005. The current claim limit is \$25,000.00.

The claim was first raised in the January Application. This claim was refiled in the September Application. The tenant's attempt to claim \$75,000.00 in compensation for the same issues in three separate hearings is not permitted. I find that monetary claim portion of the First March Application is substantially the same as that pleaded in the September Application. The tenant's application for compensation in this application is dismissed as it is procedurally barred by virtue of rule 2.9 of the Rules. The merits underlying that claim may be dealt with as pleaded in the September Application. The tenant may not claim for more than \$25,000.00 unless she proceeds with her claim in the Supreme Court of British Columbia. The tenant should determine whether she is abandoning the excess portion of her claim pursuant to rule 2.8 of the Rules.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the tenant and witness, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began 1 June 2014.

The tenant received the 10 Day Notice on or about 20 January 2016. On 21 January 2016 the tenant provided a bank draft to the landlord in the amount of \$775.00. The tenant filed her application to cancel the 10 Day Notice on 22 January 2016.

Analysis

In accordance with subsection 46(4) of the Act, the tenant must file his or her application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant received the 10 Day Notice on 20 January 2016. The tenant filed her application for dispute resolution on 22 January 2016. Accordingly, the tenant filed within the five day limit provided for under the Act.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the validity of the 10 Day Notice. The landlord did not submit any evidence or appear for this hearing. The landlord did not meet its onus of proof. Thus, the 10 Day Notice is set aside and is of no force and effect. This tenancy will continue until ended in accordance with the Act.

Conclusion

The tenant's application to cancel the 10 Day Notice is granted.

The tenant's application for a monetary order in the amount of \$25,000.00 is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 08, 2016

Residential Tenancy Branch

