



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMMUNITY BUILDERS FOUNDATION
and [tenant name suppressed to protect privacy]

INTERIM DECISION

Dispute Codes MT, CNC, AAT, LAT

Introduction

This hearing was convened in relation to the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice pursuant to section 47;
- authorization to change the locks to the rental unit pursuant to section 70; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;

The tenant appeared with his advocate and two witnesses. Three agents appeared on the landlords' behalf.

Jurisdictional Issues and Submissions

Pursuant to subsection 58(3) of the Act, the Residential Tenancy Branch has exclusive jurisdiction over disputes arising under the Act; however, pursuant to paragraph 58(2)(c), if there is an application with the British Columbia Supreme Court, this Branch's ability to determine a dispute may be suspended pending the outcome of that claim:

- (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.

This provision provides primacy to the Supreme Court's jurisdiction where jurisdiction overlaps so long as that matter is substantially linked to a matter that is before the Supreme Court.

In February 2016 the tenant filed a petition in the British Columbia Supreme Court. The tenant was granted an order by the Court. Neither party provided a copy of the petition or the order to the Branch. I understand from the parties that the order, dated 11 February 2016, provided possession of the rental unit to the tenant. I understand that the tenant has not obtained actual possession of the rental unit. The tenant informed me that the Supreme Court matter is scheduled to be heard at 0945 on 11 March 2016.

The tenant submits that his claim before the Branch is fundamentally different from the matter before the British Columbia Supreme Court. In particular, the tenant submits that the Supreme Court action was to get possession of the rental unit whereas this application is to cancel a 1 Month Notice, change the locks and secure access to the rental unit. Further, the tenant submits that it was necessary to apply to the British Columbia Supreme Court as he had been removed from the rental unit and felt that his belongings were in jeopardy. The tenant informed me that the wait for a hearing before the Residential Tenancy Branch was slower than that before the British Columbia Supreme Court. The tenant submits that the Supreme Court action was merely for the purpose of securing possession in the interim.

The landlord submits that the tenant's application is substantially linked to the matter that is before the British Columbia Supreme Court. In particular, the landlord submits that both the action and the application are for possession of the rental unit and the evidence submitted in support of both applications is very similar.

These issues are further complicated by a second jurisdictional issue. Pursuant to paragraph 4(f) of the Act, the Act does not apply to living accommodation provided for emergency shelter or transitional housing.

The landlord submits that housing provided to the tenant is transitional housing. In particular, the landlord points to the existence of an agreement signed by the tenant that acknowledges that the housing provided is provided on a transitional basis. Further, the landlord submits that it has entered into an agreement with the City of Vancouver to provide housing on a temporary basis as "transitional housing". In particular, use of the residential property was provided under a short-term agreement ending November

2016. The residential property was provided for transitional housing while the owner of the property waited for permits to be issued in respect of a redevelopment to occur on that site. The landlord submits that the purpose of the housing provided is to allow for stabilization of individuals transitioning from homelessness by identifying supports required and allowing the individuals to gain skills from the supportive programs provided by the landlord. The landlord submits that its goal is to transition the participants into long-term housing.

The tenant has provided a decision of another arbitrator of the Residential Tenancy Branch in respect of another rental unit within the same residential property. In that decision, the prior arbitrator found that the housing was not transitional housing. The tenant submits that he had no knowledge of the agreement between the landlord and the City of Vancouver and was not aware that his tenancy was time limited. The tenant submits that the City of Vancouver agreement cannot be determinative of the tenant's rights under the Act. The tenant submits that any ambiguity in the definition of transitional housing should be resolved in favour of the tenant as the Act is a benefit conferring statute.

Order for Additional Evidence and Adjournment

Without examining the petition and order of the British Columbia Supreme Court, I am unable to determine whether I am permitted to make a decision on this application by virtue of paragraph 58(2)(c). On this basis, I order the landlord to provide me with a complete copy of the petition and order.

To allow me time to examine the documents, I order that the hearing is adjourned to be reconvened at 1400 on 11 March 2016. I will provide an oral decision on the jurisdictional issues at the reconvened hearing (with written reasons to follow) and hear the application on its merits should I determine the Residential Tenancy Branch has jurisdiction over this matter. The participants will use the same teleconference access codes for tomorrow afternoon's hearing.

The landlord is ordered to provide a copy of the petition and order as soon as possible and in any event before the hearing is reconvened.

Further, the parties are ordered to provide me with any relevant documents in control of both parties that may arise as a result of tomorrow's chambers application.

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 10, 2016

Residential Tenancy Branch