



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding The Hotel Bourbon
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPB, MNR, FF,O

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, a monetary Order for unpaid rent, for "other", and to recover the fee for filing this Application for Dispute Resolution. At the hearing the Landlord withdrew the application for a monetary Order for unpaid rent.

The Building Manager stated that on March 09, 2016 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Tenant. The Tenant acknowledged receipt of these documents.

On April 07, 2016 the Landlord submitted 14 pages of evidence to the Residential Tenancy Branch. The Building Manager stated that this evidence was personally served to the Tenant on April 07, 2016. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On April 08, 2016 the Tenant submitted 28 pages of evidence to the Residential Tenancy Branch. The Articled Student stated that this evidence was delivered to the Landlord by a process server on April 08, 2016. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord and the Tenant agree that:

- the Tenant moved into the rental unit on September 04, 2014;
- since the Tenant moved into the rental unit the parties have entered into a series of short term tenancy agreements;
- the most recent tenancy agreement was signed on September 23, 2015;
- the most recent tenancy agreement is for a fixed term, the fixed term of which began on October 01, 2015 and ended on January 01, 2016;
- the most recent tenancy agreement declares that the Tenant must vacate the unit at the end of the fixed term;
- the most recent tenancy agreement requires the Tenant to pay monthly rent of \$525.00 by the first day of each month;
- rent has been paid for the period ending April 30, 2016; and
- occupancy of this rental unit was tenancy was the subject of a previous dispute resolution hearing, the file number of which is recorded on the first page of this decision.

A copy of the decision from the previous dispute resolution hearing, dated February 10, 2016 was submitted in evidence. In the previous dispute resolution proceedings the Tenant applied for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*, the Regulation, or the tenancy agreement. In those proceedings the Tenant was arguing that the requirement to frequently enter into new short term tenancy agreements, including the one that was signed on September 23, 2015, was unconscionable and was, therefore, unenforceable and the Tenant was asking the Arbitrator to conclude that the tenancy was a month-to-month tenancy. In her decision the Arbitrator dismissed the Tenant's Application for Dispute Resolution.

The Landlord is seeking an Order of Possession on the basis that the most recent tenancy agreement declares that the Tenant must vacate the unit at the end of the fixed term, which was January 01, 2016.

The Articled Student stated that the Tenant has applied for a judicial review of the February 10, 2016 decision; that the matter is scheduled to be heard by the Supreme Court of British Columbia on June 15, 2016; that there is no requirement for the Tenant to submit a written submission to the Supreme Court of British Columbia; and that the Tenant intends to make a written submission to that Court.

The Articled Student argued that I do not have jurisdiction in this matter as the matter is currently before the Supreme Court of British Columbia.

The Manager stated that the Supreme Court of British Columbia has not yet decided whether the Court will review the original decision; that a court date has not actually been scheduled for June 15, 2016; and that legal counsel for the Tenant has simply informed the Court they are available on that date.

The Desk Clerk stated that he understands that submissions have not yet been filed with the Supreme Court of British Columbia so the June 15, 2016 date is simply a “reserved date”.

The Tenant submitted a copy of Petition to the Court, which appears to have been filed with the Supreme Court of British Columbia on March 18, 2016, in which the Tenant has applied to set aside the Arbitrator’s decision of February 10, 2016.

Analysis

Section 58(2)(c) of the *Act* stipulates that I must resolve an Application for Dispute Resolution unless the dispute is linked substantially to a matter that is before the Supreme Court.

On the basis of the testimony of the Articled Student and the copy of Petition to the Court, which appears to have been filed with the Supreme Court of British Columbia on March 18, 2016, I find that this matter is substantially linked to a matter that is before the Supreme Court of British Columbia.

The Landlord has applied for an Order of Possession on the basis that the most recent tenancy agreement declares that the Tenant must vacate the unit at the end of the fixed term of the tenancy agreement, which was January 01, 2016. As the validity of that fixed term tenancy agreement is a matter that is before the Supreme Court of British Columbia, I find that I do not currently have authority to adjudicate this matter.

Conclusion

As I do not currently have authority to adjudicate this matter, I dismiss the Application for Dispute Resolution with leave to reapply once the matter is no longer before the Supreme Court of British Columbia.

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: April 21, 2016

Residential Tenancy Branch