



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The landlord claims for \$23,092.19 in compensation on the following basis:

- damage to fridge (\$629.69);
- registration fee to find tenant (\$262.50);
- strata fines (\$1,200.00);
- September's rent (\$1,900.00); and
- penalty for breaking the lease (\$19,000.00).

The landlord did not attend this hearing, although I waited until 1340 in order to enable the landlord to connect with this teleconference hearing scheduled for 1330. The tenant attended the hearing.

Issue(s) to be Decided

Is the Residential Tenancy Branch's jurisdiction suspended by virtue of paragraph 58(2)(c) of the Act?

Background and Evidence

This tenancy began 10 July 2015. The tenant is no longer in possession of the rental unit. The tenancy agreement was between the landlord and a corporate tenant. The tenant is an employee of the corporate landlord.

On 15 August 2015, the tenant filed a notice of civil claim in the British Columbia Supreme Court. That claim was brought against, among others, the landlord.

On 4 September 2015, the landlord filed her response to civil claim and a counter claim. Leave to file the counterclaim was granted by the Court 4 November 2015. The counterclaim includes a request for the following relief:

- general damages;
- special damages including strata fines;
- loss of half month rent for September;
- compensation for damage to the rental unit including the fridge;
- disgorgement of profits;
- punitive damages; and
- aggravated damages.

This tenancy was the subject of an earlier application for dispute resolution heard 21 December 2015. That application was brought by a corporate tenant. The arbitrator in that matter determined that the matters in that dispute were substantially linked to the matter before the Supreme Court of British Columbia.

The claim before the British Columbia Supreme Court has not been discontinued.

Analysis

Pursuant to paragraph 58(2)(c), this Branch's ability to determine this dispute may be suspended in certain circumstances:

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.

The landlord claims for substantially the same relief that she seeks in her counterclaim before the British Columbia Supreme Court. The facts pleaded in both the tenant's claim and the landlord's counterclaim are not distinct in any meaningful way from those findings of fact that I would be required to make in order to adjudicate the landlord's

claim. On the basis of paragraph 58(2)(c), I find that I am prevented from issuing a decision on this application.

At the hearing the tenant asked that I dismiss the landlord's claim because of her failure to appear. I explained to the tenant that that action would involve me issuing a decision, which, by virtue of paragraph 58(2)(c) of the Act, I am not permitted to make.

Conclusion

I decline to render a decision on this application as the Branch's jurisdiction is suspended by paragraph 58(2)(c) of the Act.

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: April 14, 2016

Residential Tenancy Branch