



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, PSF, FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord and tenant both appeared.

Jurisdiction Issues

At the commencement of the hearing, I set out that I had concerns regarding the Residential Tenancy Branch's competency to issue a decision on the merits in respect of this application.

In particular, there are four separate questions of jurisdiction or of a quasi-judicial nature:

1. Is the jurisdiction of the Residential Tenancy Branch suspended by virtue of paragraph 58(2)(c) of the Act?
2. Is the agreement between the parties a "tenancy agreement" for a "rental unit" to which the Act applies pursuant to subsection 2(1) of the Act?

- a. Does the tenant have a property interest greater than a mere tenancy agreement as a result of the discharged option to purchase?
 - b. Does the sublet nature of the tenancy agreement fall outside the Act?
3. Is the tenant's claim for compensation in the amount of \$39,851.00 outside the Residential Tenancy Branch's jurisdiction pursuant to paragraph 58(2)(a) of the Act?

Background

This dispute relates to a strata-title unit.

On or about 29 August 2013, the tenant and former owners entered into an option to purchase agreement (the Option). The Option was registered against title to the property.

Schedule B to the Option is the six-page Residential Tenancy Agreement published by the Residential Tenancy Branch. The tenancy is for a term of three years commencing 1 September 2013 and ending 31 August 2016. Monthly rent of \$2,700.00 is due on the first.

The tenant maintains that the purpose of the Option (and ancillary documents) was for the tenant to take possession of the rental unit for the purpose of engaging in short-term rentals for profit. The tenant stated that the agent for the former owners made representations that she had been engaging in short-term rentals for profit.

On or about 14 March 2014, the strata voted to amend the bylaws to restrict short-term rentals. The tenant was not provided notice of this change.

On or about 21 December 2015 title of the rental unit transferred from the former owners to the landlord. At some point prior to this transfer, the Option to purchase was discharged from title.

On 28 January 2016, the landlord served the tenant with the 1 Month Notice. The 1 Month Notice was given on the basis of the tenant's subletting activities.

On or about 29 February 2016, the tenant filed a notice of civil claim in the British Columbia Supreme Court (the Claim). The tenant seeks the following relief:

- damages in the amount of \$39,851.00 for loss of profits; and
- punitive damages in the amount of \$10,000.00.

The tenant amended the Claim on or about 18 March 2016 to add the former owners of the rental unit as respondents to the Claim and to seek rescission of the discharge of the option agreement from title.

Submissions

The tenant submits that my jurisdiction to issue a decision is suspended by virtue of paragraph 58(2)(c) of the Act as the claim filed before the British Columbia Supreme Court is substantially linked to this claim.

The landlord submits that the Supreme Court filing is a delay tactic.

Analysis

Pursuant to paragraph 58(2)(c), this Branch's ability to determine this dispute may have been suspended:

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 purpose of this provision is to provide primacy to the British Columbia Supreme Court and to avoid multiplicity of proceedings.

The Supreme Court of British Columbia considered a parallel provision to paragraph 58(2)(c) in *Palmer v Gerbrandt et al*, 2005 BCSC 1711 at para 43 (*Palmer*):

In response to the defendant's counterclaim, the plaintiff submitted that the defendant was obliged to bring their claim under the provisions of the ***Manufactured Homes Park Tenancy Act*** as the Act requires the arbitration of disputes. However, s.51(4)(a) of the Act allows the Supreme Court of British Columbia to hear a matter if "the dispute is substantially linked to a matter before the Supreme Court." Since the counterclaim arises out of the same facts as the plaintiff's claim, the defendant's counterclaim is substantially linked to a matter before the Supreme Court. As a result, the Supreme Court had discretion to hear and determine the defendant's counterclaim.

[emphasis added]

The entire basis for the 1 Month Notice relates to activities that the tenant says were specifically contemplated by the former owners and the tenant when entering into the tenancy agreement. Further, the tenant says that those activities were not prohibited in

the previous iteration of the strata bylaws. The tenant's claim for monetary compensation arises from the same issues. The factual findings required to resolve these claims are the same as those required to be made in the Supreme Court proceeding. As such, I find that this application is substantially linked to the Supreme Court matter.

While the Court may ultimately determine that the Claim is without merit, it is not for me to decide. On the basis of paragraph 58(2)(c) of the Act and *Palmer*, I find that I am prevented from issuing a decision the matters raised in this application. The Branch does not have the authority to issue a decision.

As the Branch is not competent to render a decision pursuant to paragraph 58(2)(c) of the Act, I cannot consider the other issues of jurisdiction; however, should the claims composing this application return to the Residential Tenancy Branch, the parties should be prepared to address those issues at any future hearing.

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