



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TYCON PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNR, MNR, MNDC, MNSD, ERP, RP, RR, FF

Introduction

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

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 7, 2016 ("10 Day Notice"), pursuant to section 46;
- cancellation of the landlord's 10 Day Notice, pursuant to section 46;
- a monetary order for the cost of emergency repairs to the rental unit, pursuant to section 33;
- a monetary order for money owed or compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the security and pet damage deposits, pursuant to section 38;
- an order requiring the landlord to make emergency and regular repairs to the rental unit, pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent, WG ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the owner of the landlord company named in this application and that he had authority to speak on behalf of the landlord company as an agent at this hearing. The landlord also confirmed that he had authority to speak on behalf of the individual landlord FS, also named in this application, who is the owner of the rental unit. This hearing lasted approximately 60 minutes in order to allow all parties to fully present their submissions at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the Act, I find that both landlords were duly served with the tenant's Application.

The landlord confirmed that he had received the tenant's written evidence package submitted for this hearing. However, I had not received this evidence. As this hearing did not proceed on its merits, I decline to make a finding regarding service of the tenant's written evidence package.

Preliminary Issue – Jurisdiction to hear Matter

Both parties agreed that a previous hearing was held at the Residential Tenancy Branch on July 21, 2016, after which a decision of the same date was issued by a different Arbitrator. The file number for that hearing appears on the front page of this decision. The same parties attended the previous hearing. That hearing decided the landlord company's application and granted it an order of possession based on another 10 Day Notice from May 2016 as well as a monetary order for unpaid rent from May to July 2016 offset against the tenant's security and pet damage deposits. The tenant filed for a judicial review of this previous hearing decision at the Supreme Court of British Columbia ("SCBC") and a hearing is to be held at the SCBC on September 12, 2016 to decide the matter, according to the tenant.

The tenant advised me that he was disputing the 10 Day Notice from July 2016, that is the subject of this current application, on the basis of the same reasons as given to the Arbitrator at the previous hearing. The tenant said that he was entitled to deduct money from rent on the basis of work that he had performed for the landlord. The previous hearing decision indicates this same reason being given by the tenant to explain why he had not paid rent for the 10 Day Notice from May 2016. There is also a reference in the previous hearing decision regarding the \$5,500.00 work that the tenant said that he performed for the landlord, as the tenant applied for the same amount of compensation at this hearing. The tenant also applied for the return of his security and pet damage deposits in this current application, which were awarded to the landlord at the previous hearing.

The landlord agreed that the tenant's current application is overlapping with matters that were dealt with at the previous hearing. The tenant agreed that he was using the same reason at this current hearing, as was used in the previous hearing, to deduct money from rent for both the May and July 10 Day Notices.

Analysis

Section 58 of the *Act* states the following, in part:

(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.

(4) The Supreme Court may

*(a) on application, hear a dispute referred to in subsection (2) (a) or (c), and
(b) on hearing the dispute, make any order that the director may make under this Act.*

I find that the tenant's Application is linked substantially to a matter that is currently before the SCBC, as per section 58(2)(c) of the *Act*. I find that the previous hearing decision that is currently before the SCBC under judicial review, deals with some of the same matters that the tenant has applied for in this current hearing. I find that the tenant is using the same reason at this current hearing, as was used in the previous hearing, to deduct money from rent for both the May and July 10 Day Notices. The tenant's current application for a monetary order of \$5,500.00 is the same amount that was referenced in the previous hearing decision regarding work that the tenant said that he performed for the landlord. The tenant's current application for a return of his security and pet damage deposits, was already awarded to the landlord at the previous hearing.

I advised both parties during the hearing that I decline to exercise jurisdiction over the tenant's Application. I notified both parties that as per section 58(4)(a) of the *Act*, if the tenant intends to pursue his Application against both landlords, he can file it at the SCBC for a determination.

Conclusion

I decline to exercise jurisdiction over the tenant's Application.

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: August 22, 2016

Residential Tenancy Branch