



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR

Introduction

This hearing dealt with an Application for Dispute Resolution seeking more time to cancel a notice to end tenancy and to cancel a notice to end tenancy.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

The hearing was conducted via teleconference and was attended by the respondent's legal counsel.

At the start of the hearing legal counsel for the respondent submitted that legal counsel for the applicant has consented to an adjournment of this hearing. Legal counsel for the respondent indicated that the reason for the request for adjournment is that the applicant has agreed to vacate the rental unit by October 7, 2016; that the respondent has commenced a claim in the Supreme Court of British Columbia (the Court) seeking a monetary award and a writ of possession, by consent, be issued.

However, neither party had submitted any relevant evidence to confirm any of this information. In fact, while the respondent had named a different person as their legal counsel in their Application for Dispute Resolution there was no confirmation that MT had authority to act on behalf of the respondent.

I ordered MT to submit, by fax no later than 12:00 noon on October 4, 2016, confirmation from his firm that he had authority to act on behalf of the respondent; all materials related to the Court claim; and confirmation from the applicant's legal counsel of the agreement to an adjournment. All material was submitted by the deadline.

Included in this material the respondent's legal counsel provided a letter from the applicant's legal counsel dated October 4, 2016 confirming that they "consent that the hearing currently set for October 4, 2016, be adjourned to November 24, 2016."

As a result of this letter I find that legal counsel for the Applicant was sufficiently aware of this proceeding and chose not to attend this hearing. Residential Tenancy Branch Rule of Procedure 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Prior to consideration of the request for an adjournment, I have considered two other preliminary matters. Specifically, whether the two Applications that were scheduled to be heard as cross Applications should, in fact, be heard as cross Applications and whether I can proceed on these matters while there is a current action in the Court.

Residential Tenancy Branch Rule of Procedure 2.11 allows a respondent named in an Application for Dispute Resolution to counter the Application or respond to a related Application by making a cross-application by filing their own Application for Dispute Resolution.

In the case before me I note that this Application for Dispute Resolution was submitted by an applicant who is different than the named respondent in the Application that was submitted by the respondent. As such, I find that the Application scheduled to be heard with this Application cannot be considered a cross Application to the original Application.

As a result, I order that the Applications should not be crossed and have written separate decisions for each Application.

Legal counsel for the respondent has submitted documentation to confirm that the respondent has commenced an action in the Court against the applicant. In the Notice of Civil Claim the landlord seeks the following relief:

- A writ of possession with respect to the Lands and Premises;
- An injunction restraining the applicant (on this RTB application) and their agents, servants or otherwise from trespassing upon the Lands and Premises;
- General damages;
- A determination and award of occupation rent;
- Aggravated damages;
- Punitive damages;
- Special damages;
- Interest pursuant to the *Court Order Interest Act* R.S.B.C 1996, C. 79;
- Special costs, or alternatively costs; and
- Such further relief as the Court deems just.

Legal counsel for the respondent submitted that while the facts are similar for this Application and the Court action the basis for each claim is distinguishable. They submit that this proceeding is based on the applicant's assertion that a tenancy exists

and the respondent's civil action is based on the respondent's assertion that a tenancy does not exist.

They further explain that the remedy sought in Supreme Court is based on damages for trespass including a claim for an award of occupation rent.

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

Residential Tenancy Policy Guideline #27 states the power and authority of the Residential Tenancy Branch (the Branch) is derived from the Legislation. The dispute resolution process does not create a court and so the Branch does not have inherent powers arising under the common law which are possessed by a judge. For example, the Branch does not have jurisdiction in "equity" to grant some forms of relief that a court may grant.

The Supreme Court, may, by order, assume jurisdiction over a residential tenancy matter, in which case the Branch loses jurisdiction over that dispute. If the dispute is linked substantially to a Supreme Court action then the Branch may decline jurisdiction.

Based on the submissions of the respondent's legal counsel, I find that at the heart of the respondent's claim in the Court is that a tenancy does not exist between the applicant and respondent. I find that it is not sufficient that the basis for each claim is distinguishable to determine that these matters are not linked to the civil action. Rather, I find the claim in Supreme Court will have a direct impact on whether or not the Branch has jurisdiction over the dispute between these two parties.

Therefore I find that the dispute between these two parties is substantially linked to claim before the Supreme Court and I decline jurisdiction.

As I have declined to accept jurisdiction, I have not considered the respondent's request for an adjournment.

Issue(s) to be Decided

The issues to be decided are whether the applicant is entitled to more time to submit an Application for Dispute Resolution seeking to cancel a notice to end tenancy and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Sections 46 and 66 of the *Residential Tenancy Act (Act)*.

Should the applicant be unsuccessful in seeking to cancel the 10 Day Notice to End Tenancy for Unpaid Rent it must also be decided if the respondent is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

Conclusion

Based on the above, I dismiss this Application for Dispute Resolution in its entirety, with leave to reapply pending the outcome of the current action 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: October 05, 2016

Residential Tenancy Branch