



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Occupants of the dispute property on August 24, 2016. The occupants applied to cancel a 1 Month Notice to End Tenancy for Cause (The “1 Month Notice”), for more time to cancel the 1 Month Notice, and to recover the filing fee from the Owner of the dispute property.

An agent for the Owner and legal counsel for the Occupants appeared for the hearing. Legal counsel provided submissions during the hearing and the Owner’s agent provided affirmed testimony. The Owner’s agent confirmed receipt of the Application and their accompanying documentary evidence pertaining to this file number. Legal counsel confirmed receipt of the Owner’s documentary evidence which was served one day prior to this hearing to both the Occupants and to the Residential Tenancy Branch. I asked legal counsel if she had any objection to me allowing the Owner’s late evidence provided for this hearing. No objection was raised and the Owner’s agent was allowed to rely on his late evidence served prior to this hearing.

In their written submissions, the parties had raised an issue of ownership of the dispute property. Legal counsel stated that the ownership issue was before the BC Supreme Court and submitted that this situation is complex and beyond that of a landlord and tenant dispute. The Owner’s agent disputed this. The parties were asked to provide evidence on this matter first. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the issue to be decided.

Issue to be Decided

Is this dispute linked substantially to a matter before the Supreme Court?

Background and Evidence

Legal counsel explained that the Occupants were the original owners of the dispute property from 1987. The dispute property is a single family dwelling with a basement unit. In 2008 the then Occupants rented the basement to the now Owner under a tenancy agreement. In 2009, the then Occupant owners agreed to loan large amounts of monies to the now Owner for the sole purpose of investing that money into real estate for returns. The then Occupants collapsed various savings plans and took out lines of credit against the equity in the dispute property in order to provide these funds to the now Owner. In return, the now Owner would pay the interest associated with the borrowed monies as well as paying the loaned monies back.

However, in 2011 the now Owner was not able to make the interest payments on the monies as per their agreement. As a result, the now Owner convinced the Occupant owners to sell the property to him at fair market value of \$749, 870.10 which they did without obtaining legal advice. The title was then transferred from the now Occupants to the now Owner. Legal counsel submitted that the parties agreed that the Occupants would enter into a residential tenancy agreement with the Owner and that the rent payable under that tenancy agreement would then go towards payment of the mortgage and ultimately to pay back the monies owed to the Occupants.

Legal counsel submitted that the Occupants did not get a copy of the agreement they signed and that it was only entered into so that the Owner was able to get a mortgage after showing the banks that he would be receiving funds as rent from the Occupants. Legal counsel submitted that ownership was transferred to the Owner by the Occupants so that the Owner could hold legal title to the dispute property in trust and in whole or part for the Occupants.

Legal counsel alleged that at this time, it came to the attention of the Occupants that the monies they had been loaning to the Owner had not been put towards investment into real estate but into a Ponzi scheme in another country. Legal counsel stated the Occupants paid the Owner \$500.00 towards the documented rent amount of the tenancy agreement of \$2,000.00 per month. The remainder was then paid to the Owner by renters who the Occupants had sublet the basement portion of the dispute property to with the consent of the Owner. As a result, the Occupants were paying a subsidized rent amount to the Owner.

Legal counsel submitted that due to the ownership issue with the dispute property, the Occupants served the Owner with notice of a civil claim in the BC Supreme Court on July 8, 2016. A copy of this was provided into evidence. Legal counsel summarized the

action in the civil claim which centered on the above evidence and asks for relief, which includes in part, an order that the dispute property vests in the Occupants as joint tenants or that the Owner holds the property in trust in favor of the Occupants.

Legal counsel explained that shortly after this, the Occupants were served with the 1 Month Notice dated July 16, 2016 which was posted to their door and received by them on July 18, 2016. The 1 Month Notice was provided into evidence and has a vacancy date of August 31, 2016. The reasons indicated on the 1 Month Notice for ending the tenancy are that the Occupants are alleged to have:

- Breached of a material term of the tenancy agreement that was not corrected after written notice to do so was given;
- Assigned or sublet the rental unit without the Owner's consent; and
- Knowingly gave false information to prospective purchasers of the rental unit.

Legal counsel submitted that the Occupants dispute the reasons on the 1 Month Notice as they had the consent of the Owners to sublet the basement unit of the dispute property; the Occupants provided email evidence to support this assertion. Legal counsel stated that the issue of ownership and occupancy of the dispute property was a matter that has to be determined by the BC Supreme Court and to allow the Owner to end the tenancy through the Act when there is no jurisdiction would create significant and irreparable prejudice to the Occupants.

The Owner's agent disputed legal counsel's assertions. He confirmed that he had firsthand knowledge of the events in this dispute. The Owner's agent confirmed that the Occupants had been the original owners of the dispute property but disputed that the Owner had diverted the monies provided to them by the Occupants to schemes rather than into real estate. The Owner's agent testified that the Occupants were very well aware that the monies provided to the Owner were being used to invest into schemes and not into real estate and he has evidence of this. The Owner's agent confirmed that the Owner discovered at a later date that the monies had unknowingly been provided for Ponzi schemes and the Owner was also a victim of these schemes.

The Owner's agent testified that after discovering the loss of this money in the Ponzi scheme, the only way to deal with the matter was for the Owner to purchase the property from the Occupants and that the Occupants would pay rent under a tenancy agreement. The owner's agent confirmed that the rent money was going towards paying the Owner's mortgage which the owner had taken out on the dispute property. The Owner's agent confirmed that the parties had a verbal agreement that when the time

was right, the Owner would sell the property and the Owner and the Occupants would split the proceeds of the sale to satisfy the outstanding debts.

The Owner's agent testified that earlier in the year, he approached the Occupants about selling the dispute property as the market was right for selling. However, the Occupants refused to allow the sale and refused entry to the Owner. The Owner's agent testified that as a result, he filed an application for dispute resolution with the Residential Tenancy Branch and a hearing took place on August 31, 2016 with another Arbitrator. The file number for that hearing is documented on the front page of this Decision.

The Owner's agent stated that the Owner was successful in obtaining an order to enter the dispute property. The Owner's agent testified that the Arbitrator conducting that hearing made no findings on jurisdiction and that the issue before the BC Supreme Court is not linked to the tenancy established by the parties in this case.

The Owner's agent testified that allegations made by the Occupants in the civil action are unfounded and have not yet been proven. The Owner's agent asserted that the civil action is intended to allow the Occupants more time to stay at the dispute property and a way to stall the sale of the property so that the potential proceeds of a sale are being delayed and that this will only further delay the process for several years to come. The Owner's agent submitted that the Occupants have made a claim for damages in their civil action so if they feel they were to be wrongly evicted from the dispute property, they would be compensated in their claim. The Owner's agent stated that the Owner sees this dispute as two separate agreements that are not linked together.

The Owner's agent confirmed that they had been served with the Occupants' notice of civil claim and that the Owner had retained legal counsel who had provided a response to the Supreme Court matter. However, no date has been set to hear that matter.

Analysis

Section 58(2) (c) of the Act provides that if the director receives an Application, the director must determine the dispute unless the dispute is linked substantially to a matter that is before the Supreme Court.

In this case, I have carefully considered the evidence provided by the parties in this case and I find that I am unable to determine the dispute because it is substantially linked to a matter before the Supreme Court. It is clear that there is a pending matter in the BC Supreme Court between these parties that has yet to be scheduled for determination. I find that a significant and key determination that is to be made in the

civil action is based on a dispute regarding the transfer of ownership of the dispute property and the interest claimed by both parties in the dispute property. I find that this is not a tenuous link between the matter before me and the BC Supreme Court.

Notwithstanding the Owner's agent's concerns that the matter before the BC Supreme Court will take a long time to determine, I am unable to use this reason alone to make findings in this case. I am also not able to find that the civil action brought by the Occupants against the Owner has been done so frivolously, in bad faith, and lacks validity; this is something the BC Supreme Court must decide.

I find that to make findings in this case on whether this tenancy should end through the 1 Month Notice would be premature as the issue of ownership of the dispute property is before the BC Supreme Court. I find that matter must be determined before any findings can be made on the Occupants' Application to end the tenancy.

Conclusion

I find this dispute is substantially linked to a matter before the BC Supreme Court. Therefore, I dismiss the Application with leave to re-apply after the BC Supreme Court makes that determination. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 21, 2016

Residential Tenancy Branch