



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Village Gate Homes, Division of UBC Properties Trust
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPN, OPR, MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by two agents for the applicant.

The applicant testified the respondent was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act* (Act) by registered mail on August 12, 2016 in accordance with Section 89. Section 90 of the Act deems documents served in such a manner to be received on the 5th day after they have been mailed.

After the hearing the applicant submitted some evidence (see below) which included a receipt from Canada Post dated August 11, 2016 for registered mail sent to the respondent.

Based on the testimony of the applicant and their subsequent documentary evidence, I find that the respondent has been sufficiently served with the documents pursuant to the Act.

At the outset of the hearing I raised two issues with the applicant. First, there was no documentary evidence in the file held by the Residential Tenancy Branch. After hearing testimony from the applicant's agent that they had submitted evidence to the Branch well in advance of the hearing and served the respondent with their evidence, I ordered the applicant to resubmit their evidence to the Branch by fax. The applicant submitted this evidence by February 9, 2017.

Further, based on the name of the applicant given on the Application for Dispute Resolution I questioned the applicant in regard to their relationship to the University of British Columbia. The applicant submitted that Village Gate Homes is a division of a trust set up by the University and operates separately from the University.

Section 4(b) of the Act stipulates that the Act does not apply to living accommodation owned or operated by an educational institution and provided by that institution to its students or employees. As such, prior to proceeding with the applicant's claim I requested documentary evidence that would explain the relationship between the University; the applicant; and the respondent. The applicant submitted a letter of explanation from their legal counsel by February 9, 2017.

Upon review of the letter of explanation from the applicant's legal counsel, I determined that I needed documentary evidence to support legal counsel's explanation and I requested the applicant submit the following documents:

- A full explanation of the relationship between all parties and UBC. Specifically VGH; UBC Properties Trust; and the respondent with the University of British Columbia
- Documentary evidence to support the above noted explanation such as all legal documents showing the relationships between VGH and UBC Properties Trust with the University of British Columbia;
- Any and all informational and promotional material such as brochures regarding the property that is used for advertising rental accommodation to either the general public, University of British Columbia staff and students or both; or any and all documents used in providing information to tenants including but not limited to emergency contact information or how disputes related to tenancies might be resolved.

The applicants submitted the following evidence by February 17, 2017:

- A copy of a 2nd letter from the applicant's legal counsel providing an explanation of the relationship between the parties, which includes confirmation that the respondent was a former employee of the University of British Columbia;
- A copy of a Trust Deed dated June 9, 1999 creating a trust between the University of British Columbia and University Properties Investments Ltd;
- A copy of a Sole Proprietorship Summary for the company named Village Gate Homes;
- A copy of a Deed of Variation dated December 11, 2007;
- A copy of a BC Company Summary for University Properties Investments Ltd;
- A copy of a lease between the University of British Columbia and University Properties Investments Ltd that states the University has agreed to sell the premises (building) to the University Properties Investments Ltd, and to lease to the land to them;
- A copy of a blank tenancy agreement that the applicant uses; and
- Promotional material that the applicant uses including their website address.

In regard to the subject residential property and based on the documentary submissions of the applicant I find the University of British Columbia and University Properties Investment Ltd entered into an agreement that "The Landlord (UBC) has agreed to sell the Premises to the Tenant (UBC Properties Investments Ltd.), and to lease to the Tenant the Lands which are situate in the subdivision known as Wesbrook Place Neighbourhood and formerly known as South Campus. [Reproduced as written]

I also find the agreement stipulates the "Permitted Activities means the use and occupation of the Premises by the Tenant or a Subtenant for the sole purpose of providing residential housing to faculty and staff of the Landlord and other members of the Campus community, with not less than 10% of the units in the Premises to be set aside for occupancy by the elderly, youths, students, individuals in need of assistance, or individuals whose eligibility is dependent upon them being members of the Landlord's faculty or staff." [Reproduced as written]

I find the nature of the relationship between the University and University Properties Investments Ltd appears to be that if the property management company does not abide by the terms of the trust, the property would revert back to the university, as the settler. In addition, I find the "permitted activities" under the lease between the University and the University

Properties Investments Ltd are that the premises are being used by the University, through the University Properties Investments Ltd, for the benefit of students or employees.

I also find the promotional material for the Village Gate Homes (including their website) confirms that the housing is only for staff and students of the University and that the "Proceeds generated through Village Gate Homes' buildings benefit UBC Endowment funds that generate support for a wide range of programs and activities such as scholarships and bursaries across the University in perpetuity. By choosing to live on campus you are benefiting the sustainability of the University's academic mission." [Reproduced as written]

Based on the above, I find that ultimately the University has control over and receives benefits from the operation of the subject residential property. Therefore, I find that the living accommodation that is subject to this dispute is owned and operated by the University of British Columbia and was provided to an employee of the University.

As a result, I find that Section 4(b) of the *Act* excludes the agreement between the applicant and the respondent from the jurisdiction of the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the applicant is entitled to an order of possession for unpaid rent and/or based on the respondent's notice to end tenancy; to a monetary order for unpaid rent; for liquidated damages; for cleaning of and damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the respondent for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 46, 55, 67, and 72 of the *Act*.

Conclusion

Based on the above, I dismiss this Application for Dispute Resolution for want of jurisdiction.

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: March 03, 2017

Residential Tenancy Branch