



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ff, mndc, mnsd, o, olc

Introduction

Both parties attended the hearing, which was conducted by way of telephone conference call. There was an issue of receipt by the landlord of the tenant's evidence, and the receipt by the Residential Tenancy office of the landlord's evidence package. Under the circumstances of this claim, I need not address those procedural issues.

The tenant alleges that a tenancy began September 1, 2013, and ended August 31, 2016. At the start of the tenancy a \$1,350.00 security deposit was paid as well as a \$1,000.00 pet damage deposit. Neither deposit was returned to the tenant, and the tenant makes application pursuant to the *Residential Tenancy Act* (the Act) for recovery of same, doubled, pursuant to the provisions in section 38 of the Act. The tenant further seeks recovery of his filing fee from the landlord, pursuant to section 72.

In his submissions, the landlord advised that prior to the ending of this apparent tenancy, the tenant made a claim as against the landlord in the Supreme Court of British Columbia, and the landlord subsequently filed a counter claim in that forum. I was also advised made aware that in a previous Residential Tenancy hearing (file 845715), the arbitrator declined jurisdiction, finding the previous Residential Tenancy claim was substantially linked to the claims before the court. Accordingly, I address the issue as to my jurisdiction to hear this claim.

Issue(s) to be Decided

Do I have jurisdiction to hear the tenant's claim?

Background and Evidence

In the former hearing in file 845715, the tenant had made application for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause 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
- to recover his filing fee for this application from the landlord pursuant to section 72.

In the decision of that claim, the arbitrator identified four several questions of jurisdiction or of a quasi-jurisdictional nature, namely:

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?

The arbitrator noted among other things that there had been an Option to Purchase in favour of the tenant, and that the six-page Residential Tenancy Agreement was a schedule to this Option Agreement. After being served with a One Month Notice to End tenancy, on or about 29 February 2016, the tenant filed a notice of civil claim in the British Columbia Supreme Court. The tenant sought 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.

The tenant submitted that jurisdiction of that previous arbitrator to issue a decision was suspended by virtue of paragraph 58(2)(c) of the Act as the claim filed before the British Columbia Supreme Court was substantially linked to the Residential Tenancy claim.

In the result, the arbitrator found that the factual findings required to resolve the claim were the same as those required to be made in the Supreme Court proceeding, and found that the application was substantially linked to the Supreme Court matter. The arbitrator declined to render a decision on the application and that the jurisdiction of the Residential Tenancy Branch was suspended by paragraph 58(2)(c) of the Act.

Analysis

Given the findings of the previous arbitrator and the submissions before me, it is clear that there are fundamental issues that lie before the Supreme Court, as to whether the agreement between the parties is a “tenancy agreement” for a “rental unit” to which the Act applies pursuant to subsection 2(1) of the Act, and whether the tenant has a property interest greater than a mere tenancy agreement (as a result of the Option to Purchase agreement). One possible outcome of the Supreme Court claim is that the relationship between the parties was never one of landlord and tenant. Accordingly, until that underlying issue is resolved, it would be inappropriate for any other decisions to be made under the authority of the Residential Tenancy Act.

Based upon the above, and including the reasons expressed by the former arbitrator which are expressly accepted and adopted, I find that this claim is a dispute linked substantially to a matter that is before the Supreme Court, and that jurisdiction lies with the court. Pursuant to section 58(2)(c) of the Act, the Residential Tenancy Branch director, and I as the director’s delegate, have no authority to determine this dispute.

Conclusion

This claim is dismissed 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 23, 2017

Residential Tenancy Branch