



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN NATIONAL RELOCATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT AAT LRE MNDC OLC PSF FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: an Order of Possession to the tenant; 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 that the landlord provide services or facilities required by law pursuant to section 65; an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord testified that he received the tenant's materials (documentary and digital) provided for this hearing. The landlord testified that he sent by registered mail a large package of materials to the tenants intended as evidence for this hearing. Despite the failure of the landlord to prove that he had sufficiently served the documents, the tenant agreed to accept service by email during the hearing. The tenant was given an opportunity to review the documents and agreed to proceed with the hearing, allowing the landlord to rely on the materials he submitted for this hearing.

While I have received and considered the entirety of the testimony and evidence of both parties for this hearing, and the hearing continued for approximately 110 minutes, I must address a preliminary matter prior to considering the substantive claims made by the tenant.

Preliminary Issue: Jurisdiction of the Residential Tenancy Branch

At the outset of the hearing, legal counsel for both parties were canvassed regarding any preliminary matters. Counsel for the landlord stated that he wanted to argue that there was no jurisdiction for this matter to be heard in this forum however his argument was very unclear. At the outset of the hearing, landlord's counsel argued jurisdiction by explaining that the tenant sought a very substantial amount of money and that there are complicated issues which relate

to the sale of the property. He did not, at the outset of the hearing, articulate a ground under which to consider the jurisdiction of the tenant's application.

However, at the end of this hearing, the landlord, who joined the conference at a later time, stated that he had filed a claim against the seller (previous landlord) of the residential premises in the Supreme Court of British Columbia. The landlord candidly testified that the ongoing dispute with the tenant with respect to the continuation of this tenancy has resulted in his filing a claim against the seller (previous landlord) for not meeting the terms of the sale.

The tenant's counsel made submissions stating that the tenant's application for a monetary amount against the landlord as well as an Order of Possession for the unit do not necessarily relate to the Supreme Court action initiated by the landlord. She argues that the tenant is not a party named in that action and that the tenant's status at the rental unit can be determined regardless of the dispute between the seller landlord and buyer landlord.

Neither party submitted documentary evidence for this hearing that shows this matter is currently being addressed in Supreme Court. However, the tenant did not dispute that this claim has been made – only whether it affects this Residential Tenancy Branch dispute resolution hearing.

The landlord testified that he has filed against the seller/previous landlord regarding an alleged failure of the seller to provide vacant possession of the property on the completion of the sale as agreed upon between the buyer and seller. In other words, the landlord has decided to sue the seller of the property because the seller failed to ensure the tenant vacated the unit prior to the buyer's possession of the property/premises. The issues to be determined are whether the seller provided a notice to end tenancy to the tenant and sufficiently advised him of the buyer/new landlord's intention to live in the rental unit. At this hearing, the tenant claimed that he had not been provided a notice to end tenancy by the previous landlord/seller.

A fundamental requirement of any tenancy is an agreement, a meeting of the minds. In these circumstances, based on the materials provided and the testimony of both parties, it is still unclear as to the nature of any agreement between the seller and the buyer as well as with the seller and the tenant. I find that the evidence of the seller is essential in making a determination in this residential tenancy dispute.

The facts are unclear in this matter. I find that this dispute is beyond the realm of a simple tenancy matter and primarily relates to the sale of the property and the circumstances surrounding that sale. I find that this tenancy dispute is inextricably linked to the dispute between the buyer landlord and the seller landlord as one of the issues at this hearing (whether the tenancy should end and whether the end was contemplated in the sale of the property) are central issues in the matter that will be addressed in the court action started by the buyer/new landlord. In all the circumstances, I find that this matter cannot be determined at this time before

the Residential Tenancy Branch. I find that the hearing of this matter in court supersedes the hearing of this matter at the Residential Tenancy Branch.

With regard to the following issues to be considered with respect to this application, I find that the matter of the requirements of the sale of the property must be addressed prior to any consideration of the following issues,

Whether the tenant entitled to an Order of Possession and/or a monetary order for compensation for damage or loss, an order requiring the landlord to comply with the Act, an order that the landlord provide services or facilities, order to suspend or set conditions on the landlord's right to enter the rental unit or an order to allow access to or from the rental unit or site for the tenant or the tenant's guests?

Based on the party's description of the circumstances between the applicant (tenant) and respondent (buyer/new landlord) in this dispute and hearing, as well as the undisputed testimony of court proceedings in another venue in relation to the sale of this premises, I find that I have no jurisdiction to consider this matter.

Conclusion

I decline to hear this matter as I do not have 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: October 18, 2017

Residential Tenancy Branch