



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT; ERP; MNDC; MNR; OLC; PSF; RP; RR; LRE

Introduction

The Applicant is applying for Orders that the Respondent comply with the Act; make regular and emergency repairs; and provide services or facilities. The Applicant is also applying for a rent reduction; an Order that he be provided access to the property; compensation for damage or loss; an Order that the Respondent reimburse the Applicant for his costs in making emergency repairs; and a rent reduction.

Both parties attended the Hearing and gave affirmed testimony.

At the outset of the Hearing, the Respondent's legal counsel submitted that he wished to speak to a matter of jurisdiction. The Respondent's legal counsel submitted that the Act did not apply because the tenancy was not a residential tenancy agreement, but a commercial tenancy agreement. In the alternative, he argued that the tenancy was frustrated.

Both parties gave lengthy submissions with respect to the tenancy. During the parties' submissions it became clear that the Applicant has filed a Builders Lien action in the Supreme Court of British Columbia. The parties agreed that the Supreme Court action seeks compensation for many of the same issues set out in the Application.

Section 58 of the Act provides, in part:

Determining disputes

58 (1) Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that
 - (i) are required or prohibited under this Act, or
 - (ii) relate to
 - (A) the tenant's use, occupation or maintenance of the rental unit, or

(B) the use of common areas or services or facilities.

(2) Except as provided in subsection (4), if the director accepts an application under subsection (1), the director must resolve the dispute under this Part unless

(a) the claim is for an amount that is more than the monetary limit for claims under the *Small Claims Act*,

(a.1) the claim is with respect to whether the tenant is eligible to end a fixed term tenancy under section 45.1 [*tenant's notice: family violence or long-term care*],

(b) the application was not made within the applicable period specified under this Act, or

(c) the dispute is linked substantially to a matter that is before the Supreme Court.

(2.1) Subsection (2) (a.1) of this section does not apply if the basis of the claim is that a statement purporting to confirm a tenant's eligibility to end a fixed term tenancy for the purposes of section 45.1 (2) was made by a person who was not authorized to do so under the regulations.

[Reproduced as written]

Further to the provisions of Section 58(2)(c) of the Act, I decline to accept jurisdiction with respect to this matter as I find that this dispute is substantially linked to the Supreme Court action.

Conclusion

I decline to accept jurisdiction of this matter, pursuant to the provisions of Section 58(2)(c) of the Act.

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: December 15, 2017

Residential Tenancy Branch