



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC LRE MNDCT FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; a monetary order for damage or loss pursuant to section 67; an order to suspend or set conditions on the landlord's right to enter the rental unit 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 was assisted by a lawyer and an assistant. The landlord confirmed receipt of the tenant's application for dispute resolution and the tenant confirmed receipt of the landlord's evidentiary submissions for this hearing. The landlord also confirmed receipt of the tenant's amendment to the original application to seek a monetary amount of \$1500.00.

Preliminary Matter: Jurisdiction

Before considering the tenant's substantive application, I must consider whether I have jurisdiction to hear this matter. Both parties agreed that the landlord has brought an action against the tenants in the Supreme Court of British Columbia alleging that two potential tenants (the tenant named in this proceeding and his witness) trespassed on the landlord's property and took wrongful possession of the property. Based on the submissions of both parties and landlord's counsel, the court proceedings have been adjourned pending the outcome of this hearing.

The landlord and her lawyer submitted that this matter is not within the jurisdiction of the Residential Tenancy Branch in that no tenancy agreement existed between the two parties and that it is currently a matter before the Supreme Court. The tenant and his

witness submitted that the parties did have a tenancy agreement. The tenant did not submit any documentary evidence prior to the date of this hearing however the landlord submitted a copy of what she referred to as a ***draft written*** tenancy agreement (“the tenancy agreement”).

The tenancy agreement submitted for this hearing was not signed by either party (landlord or tenant). An addendum attached to the residential tenancy agreement indicated that the downstairs portion of the residential premises was the only portion rented by the tenants and that the upstairs portion of the residential premises were in a state of disrepair. The addendum indicated that, if the tenant were to undertake sufficient repairs to the upstairs portion of the home and the stairs, the landlord would consider allowing the tenants to occupy the upstairs of the rental premises as well. The addendum to the residential tenancy agreement was also unsigned.

At this hearing, a set of peculiar circumstances were described by both parties. The tenants responded to the landlord’s advertisement regarding the rental unit. The parties were not familiar to each other prior to this communication. After some email correspondence, the prospective tenants and the landlords met at a coffee shop. Both parties agree that the landlord brought a tenancy agreement and discussed the nature of the tenancy, including the amount of rent to be paid. The tenant’s witness testified that while he originally intended to rent from the landlords with the tenant, after meeting the landlords, he decided that he would not live in the rental unit. The tenant testified that he continued to negotiate with one of the landlords while his intended co-tenant and the other landlord argued.

The landlord testified that, at a certain point in the meeting at the coffee shop, both landlords decided that they did not wish to rent to either of these tenants. The landlord testified that when she informed the tenant that she would not agree to rent to him, the tenant’s witness (prospective co-tenant) snatched the pre-filled tenancy agreement and attempted to run away with it. A melee and scuffled ensued between all of the parties present over the written agreement. The police were called and attended.

The tenant’s Residential Tenancy Branch dispute resolution application form indicates that the tenant is seeking recovery of \$1500.00 that he claims he provided to the landlord at the initial meeting however the landlord denies that any money was received from the tenant. The landlord alleges that, after the meeting at the coffee shop, the tenants attempted to take up residence in the rental premises without her permission. The landlord and tenant testified that the police were again called and attended the property to address the dispute at the rental unit premises. The tenant insists that the

landlord and others attempted to forcibly remove him from the home. The landlord insists that the tenant had no authorization to move into the rental unit. On that date, another melee ensued when the landlord told the tenant to get out of the rental unit and the tenant refused to do so.

The issues raised by the tenant's application include; whether he is entitled to recover \$1500.00 from the landlord for costs that he has incurred by bringing this application and responding to the landlord's action in Supreme Court; whether he is entitled to set or suspend the landlord's entry to the rental premises and/or rental unit as well as whether the landlords should be required to make repairs. At the core of these issues is the primary issue to resolve: does a tenancy exist between the parties?

A fundamental requirement of any tenancy is an agreement, a meeting of the minds. In The evidence of both parties at this hearing illustrates a substantial disagreement about whether their interactions resulted in a tenancy or not. Based on the evidence before me, the landlord has filed for and received an eviction order from the Supreme Court of British Columbia. The tenants applied for a stay of a Supreme Court order after providing the evidence of an existing dispute resolution application to the Residential Tenancy Branch. At this scheduled hearing date, the tenants submitted that this is a Residential Tenancy matter and should be addressed by a Residential Tenancy Arbitrator while the landlord argued that it is not.

Section 58 of the Act provides the scope of a Residential Tenancy Branch arbitrator's decision making power. It provides that an arbitrator may make determinations with respect to the rights and obligations of the parties to a tenancy agreement with respect to use of the residential premises and other features of a tenancy. There are exceptions to an arbitrator's power at section 58(2). In this case, I find that section 58(2)(c): "the dispute is substantially linked to a matter that is before the Supreme Court". Section 58(4) reads,

- 58 (4) The Supreme Court may
 - (a) on application, hear a dispute referred to in subsection (2)
 - (a) or (c), and
 - (b) on hearing the dispute, make any order that the director may make under this Act.

I accept the evidence of the landlord, the landlord's agent as well as the submissions from the landlord's counsel that the landlord has brought an action against these prospective tenants with the intent to show that they are not lawful tenants with a right to the landlord's property and rental unit premises. The landlord's Supreme Court action

relates to possession of the property (use and occupancy) and therefore the tenant's claim is substantially linked to the Supreme Court proceedings.

I find that this application by the tenant is substantially linked to the Supreme Court proceeding begun by the landlord and therefore any determination that I would make with respect to the tenant's application would impact and limit any decision made by a judge of the Supreme Court. Therefore, given all of the evidence I have heard in this matter, and the restrictions under the Act of my purview as an arbitrator, I decline to make a decision as I find that I do not have jurisdiction or authority to do so.

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: February 09, 2018

Residential Tenancy Branch