



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNDL, MNRL, FFL

Introduction

This hearing convened as a “Landlord’s Application for Dispute Resolution”, filed on August 8, 2018, wherein the Applicant requested monetary compensation from the Respondent in the amount of \$26,203.32 and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on August 8, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

In a letter from the Respondent’s legal counsel, they apologize for the late submission of their evidence. As the Respondent’s evidence was received seven days prior to the hearing, they were received in accordance with *Residential Tenancy Branch Rules of Procedure Rule 3.15* such that they are not late.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Delivery of Decision

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Preliminary Matter—Jurisdiction

On December 11, 2017 the Applicant was granted an Order of Possession and a Monetary Order based on a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities. The file number for that matter is included on the unpublished cover page of this my Decision.

The Respondent applied for Review Consideration of the December 11, 2017 Decision. By Decision dated December 28, 2017, Arbitrator Holloway dismissed the Application.

During the hearing before me, the Respondent's Advocate confirmed that his office was only recently retained by the Respondent. He confirmed that the Respondent's former counsel filed a Petition on February 7, 2018, requesting Judicial Review of the December 11, 2017 Decision granting the Applicant an Order of Possession and Monetary compensation against the Respondent as well as the December 28, 2017 Review Consideration Decision of Arbitrator Holloway.

The Respondent's Advocate confirmed that in the Petition the Respondent requested the following:

- an Order setting aside the original decision of the Adjudicator;
- an Order setting aside the Review Consideration Decision of Arbitrator Holloway;
- a stay of the Order of Possession;
- an Order allowing the introduction of new evidence;
- an Order adding P.S.G. a party or intervenor;
- a declaration that P.S.G is the Tenant, not S.K.W. (the Tenant named in this application).

The Respondent's Advocate stated that on the same day a Notice of Application was heard wherein the Respondent requested an Interim Order staying the Order of Possession. This interim application was not successful.

The Advocate further stated that, having only just been retained, he was not certain whether a trial date had been set with respect to the Petition. He also stated that to his knowledge the Applicant's legal counsel were served with the Petition in February of 2018; the Applicant denied being served any documents relating to the petition.

I directed the Respondent's Advocate to provide me with a copy of the Judicial Review Petition and the Notice of Application. I confirm that on December 7, 2018 those documents were received by the Residential Tenancy Branch. Further, I confirm those documents coincide with the information provided by the Respondent's Advocate during the hearing before me.

As noted during the hearing, section 58(2)(c) of the *Residential Tenancy Act* provides as follows:

58 ...

(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

...

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

In the Judicial Review Proceedings, the Respondent seeks a declaration that he is not the tenant. Should the Respondent be successful in that review, the Residential Tenancy Branch would lack jurisdiction to deal with the dispute as the Branch only has jurisdiction over tenancy matters.

The Landlord's representative noted that in another decision of the Residential Tenancy Branch Arbitrator Lee found the Respondent, S.K.W., to be the tenant, rather than the named tenant in the application before her (S.G.) (the file number for that matter is also noted on the unpublished cover page of this my Decision). Notably, S.K.W. was not a party to the dispute giving rise to that application, although he was present as a witness.

In any event, I find that the finding of Arbitrator Lee, does not alter the fact that the question of S.K.W.'s status as a tenant is squarely before the B.C. Supreme Court.

As such, I decline jurisdiction to hear this matter as I find that dispute before me, between B.G. and S.K.W., is substantially linked to the Judicial Review Proceedings before the Supreme Court.

The parties were reminded of the strict two year limitation period imposed by section 60 of the *Act*.

Conclusion

I decline jurisdiction to hear this matter as the dispute between the Applicant and the Respondent is substantially linked to a matter before the B.C. Supreme Court.

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 11, 2018

Residential Tenancy Branch