



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This decision is in respect of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act"), filed on December 11, 2018. The landlord seeks compensation for various items under sections 67 and 72 of the Act.

A dispute resolution hearing was convened on April 2, 2019 and the landlord's agent, a witness, the tenant, and the tenant's son (acting as interpreter and witness) attended. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. I confirmed that the parties had complied with service requirements of evidence under the Act and the *Rules of Procedure*.

I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure*, under the Act, but only evidence relevant to the preliminary issue of this application is considered in my decision.

Preliminary Issue: Jurisdiction

The preliminary issue is whether I have jurisdiction to resolve the landlord's dispute.

During the tenant's son's submissions, he argued that as the rental unit was at all material times used as an Airbnb vacation accommodation, the Residential Tenancy Branch is without jurisdiction to hear the dispute. He submitted that sections 4(d) and 4(e) of the Act, which apply to businesses operated out of a rental unit, and which apply to vacation accommodation, effectively excluding this dispute from arbitration under the Act. The landlord did not comment on or object to the tenant's submissions in this regard.

The tenant's son testified, and the landlord did not dispute his testimony, that the tenant operated an Airbnb business out of the rental unit during the entirety of the tenancy. I note that the written tenancy agreement's addendum permits the tenant to operate such a business, effectively transforming the tenancy agreement into a commercial lease.

Finally, the parties both confirmed that there is active litigation before the Supreme Court of British Columbia, wherein the tenant has a claim against the landlord for \$10,000,000.00 for business losses arising out of the landlord's failure to replace a stinky carpet, which ultimately (argues the tenant) lead to the tenant's Airbnb license being revoked. Much of the testimony in the hearing was about the stinky carpet.

Section 58(2) of the Act requires me to resolve a dispute under the Act "unless (c) the dispute linked substantially to a matter that is before the Supreme Court." And what is meant by the phrase "linked substantially"? Justice MacNaughton in *Gates v. Sahota*, 2017 BCSC 193, held that, referring to section 58(2)(c), a "substantial link is exactly that - there is a link or connection between the matters that is substantial."

In this case, the tenant's civil claim is directly related to the landlord's alleged negligence and the carpet, and the landlord's dispute is directly related to the tenant's alleged negligence and the carpet (among other alleged breaches of the Act).

Given the similarities between the parties' respective disputes, I find that there is a substantial link between the tenant's civil action and the landlord's dispute. As such, pursuant to section 58(2)(c) of the Act, I am without jurisdiction to resolve this dispute.

Having found that the dispute is linked substantially to a matter that is before the Supreme Court of British Columbia and that I am without jurisdiction, I need not consider the secondary issue of whether sections 4(d) and 4(e) exclude my jurisdiction.

Conclusion

Pursuant to section 58(2)(c), I am without jurisdiction to resolve the landlord's application and I dismiss the landlord's application without leave to reapply.

The landlord is at liberty to seek a remedy in a court of competent 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 Act.

Dated: April 3, 2019

Residential Tenancy Branch