



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties participated in the teleconference. The tenants confirmed that they received the landlord's documentary evidence, the tenant did not submit any documentation for this hearing. The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Preliminary Issue – Should the RTB hear this matter?

The tenant submits that the parties reached a settlement agreement in the Supreme Court and that the action is still open. The tenant submits that the landlord is causing an abuse of process as they are trying to have the same matter and issues heard in two separate forms. The tenant submits that if they landlord wished to have the matter heard at the Residential Tenancy Branch they could have signed the documents that his lawyer submitted to have the Supreme Court action cancelled, but they did not.

The landlord submitted a copy of Petition to the Court, which appears to have been filed with the Supreme Court of British Columbia by the tenant on August 24, 2018, in which the tenant has applied to set aside the Arbitrator's decision of August 14, 2018. The tenant was granted a stay of the original decision and the tenancy continued on until June 1, 2019. Counsel for the landlord submits that the tenant left the unit in a poor and

damaged condition. Counsel submits that the tenant initiated the petition and could have easily withdrawn the application. Counsel submits that the settlement agreement is not applicable because of the damages caused by the tenant and that the settlement was in relation to use and occupancy only.

Analysis

Section 58(2)(c) of the *Act* stipulates that I must resolve an Application for Dispute Resolution unless the dispute is linked substantially to a matter that is before the Supreme Court.

On the basis of the submissions and testimony of both parties, and the Petition to the Court, I find that this matter is substantially linked to a matter that is before the Supreme Court of British Columbia.

As there is an open action pending at the Supreme Court and what both parties have referred to as a “settlement agreement”, I find that I do not currently have authority to adjudicate this matter until such time that there is no longer any active file before the Supreme Court of British Columbia or until such time as the Supreme Court of British Columbia directs.

Conclusion

As I do not currently have authority to adjudicate this matter, I dismiss the Application for Dispute Resolution with leave to reapply once the matter is no longer before the Supreme Court of British Columbia.

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: September 17, 2019

Residential Tenancy Branch