Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") and an Amendment to the Application that was filed by the Landlord under the *Residential Tenancy Act* (the "*Act*"), seeking:

- Recovery of unpaid rent and utilities;
- Recovery of the filing fee; and
- Authorization to withhold the Tenant's security deposit towards any money owed to them by the Tenant.

The hearing was convened by telephone conference call and was attended by the Tenant, the Landlord and the Landlord's Support Person, all of whom provided affirmed testimony. Although the Tenant stated that they were served with the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, contrary to *Ministerial Order M089* issued March 30, 2020, ultimately they acknowledged being personally served with these documents by the Landlord on approximately June 3, 2020, and having sufficient time to consider and respond to it.

Based on my understanding of *Ministerial Order M089*, the reason for the state of emergency declared on March 18, 2020, and common sense and ordinary human experience, I believe that the purpose behind the prohibition on personal service granted as part of *Ministerial Order M089* was to help reduce risk of infection during the current pandemic and to assist parties in meeting social distancing requirements. The principles of natural justice dictate that a party must have an opportunity to know the case against them and to appear and respond in their defense. Based on the Tenant's own testimony, they received the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, and had time to consider and respond to it. Further to this, the Tenant appeared in the hearing in their defense. As a result, I find that accepting these documents as served pursuant to sections 71 (2) (b) and 71 (2) (c) of the *Act* and proceeding with the hearing as scheduled does not unreasonably prejudice one party or result in a breach of the principles of natural justice. Based on the above, I therefore find that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing,

were sufficiently served for the purpose of the *Act* on or about June 3, 2020, and I therefore proceeded with the hearing as scheduled.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") state that the parties must serve on each other in advance of the hearing, the documentary evidence on which they intend to rely. In the hearing the Landlord acknowledged receipt of the documentary evidence before me from the Tenant by email and in person, and raised no concerns regarding this service or the acceptance of this documentary evidence for consideration in this matter. As a result, I have accepted the documentary evidence before me from the Tenant for consideration.

Although the Tenant initially believed at the commencement of the hearing that they may not have received the documentary evidence before me from the Landlord, the Landlord stated that it was served on June 3, 2020, along with the Notice of Dispute Resolution Proceeding Package. After the Landlord provided this testimony, the Tenant acknowledged that they likely received this documentary evidence, although they stated that they did not currently have this package from the Landlord in front of them. I have already found above that the Notice of Dispute Resolution Proceeding Package was sufficiently served for the purpose of the *Act* on approximately June 3, 2020. Based on the Tenant's testimony in the hearing, I am satisfied, on a balance of probabilities, that the documentary evidence before me from the Landlord was included in that package, and therefore sufficiently served on the Tenant for the purpose of the *Act*. As this service occurred more than 15 days prior to the hearing, I find that it was also served in accordance with the Rules of Procedure and I therefore accept it for consideration in this matter.

As part of their documentary evidence, the Tenant submitted a copy of a Petition seeking a judicial review in the BC Supreme Court, of a previous decision from the Residential Tenancy Branch (the "Branch") dated April 6, 2020, the associated order(s), and a review consideration decision dated May 4, 2020. They also submitted copies of the above noted decisions for my review. There was no dispute between the parties that these decisions relate to the current tenancy between the Tenant and the Landlord.

In the hearing the parties disputed the terms of the tenancy agreement as set out in the previous decision dated April 6, 2020, whether additional utilities were owed on top of rent, and if so, how much, as well as whether there was any rent or utilities currently

outstanding. As the Landlord's Application relates to outstanding rent and utilities, I find that the terms of the tenancy agreement are material to the findings of fact that are to be made in relation to this Application. However, the legal principle of res judicata dictates that I cannot reconsider in this hearing, a matter that has already been decided by an Arbitrator with the Branch.

Although the Arbitrator in the decision dated April 6, 2020, never explicitly states that they have accepted the Landlord's testimony in relation to the terms of the tenancy agreement, I find that the Arbitrator must never the less have accepted this affirmed and uncontested testimony in rendering their decision and orders enforcing a One Month Notice to End Tenancy for Cause (the "One Month Notice") for repeated late payment of rent, as they would have had to accept this testimony in order to be satisfied that a tenancy under the *Act* exists and that they therefore had jurisdiction to hear and decide the matter. As there is no indication that jurisdiction was refused, and the Arbitrator rendered a decision in that matter, I therefore find that they must have accepted the Landlord's testimony in relation to the terms of the tenancy agreement and been satisfied that a tenancy under the *Act* existed. As a result, I find that it is therefore implied in the decision dated April 6, 2020, that the Arbitrator accepted the terms of the tenancy agreement as set out by the Landlord. I therefore find that there is already a decision from the Branch in relation to the terms of the tenancy agreement and it is not open to me to reconsider the terms of the tenancy agreement as part of this Application.

Despite the above, I find that it is not simply open to me to accept the terms of the tenancy agreement as set out in the decision dated April 6, 2020, and proceed with the hearing of this matter as scheduled, as the Tenant has filed a petition in the BC Supreme Court seeking a judicial review of that decision. As a result of that judicial review, it is possible that the decision dated April 6, 2020, and the subsequent order(s) issued will be stayed, quashed, or set aside pending a new hearing by the Branch. As any decision to be made in this Application for outstanding rent and utilities would be necessarily predicated on the terms of the tenancy agreement, and the previous decision from the Branch dated April 6, 2020, wherein the terms of the tenancy agreement are set out, I therefore find that this Application is substantially liked to a matter that is before the BC Supreme Court and I therefore decline jurisdiction to hear this matter at this time, pursuant to 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: June 25, 2020

Residential Tenancy Branch