



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1122792 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

ET, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an early end to the tenancy, for an Order of Possession, and to recover the fee for filing this Application for Dispute Resolution.

Legal Counsel for the Landlord stated that on August 11, 2020 the Dispute Resolution Package was personally served to the Tenant on August 11, 2020. The Tenant acknowledged being personally served with these documents and I accept that they were served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

The Landlord submitted evidence to the Residential Tenancy Branch in July and August of 2020. Legal Counsel for the Landlord stated that all of the evidence, with the exception of a tenancy agreement naming an individual with the initials "FA", was personally served to the Tenant on August 11, 2020. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The Landlord was unable to recall when/how the tenancy agreement naming an individual with the initials "FA" was served to the Tenant. The Tenant stated that this document was never served to him. As the Tenant did not acknowledge receipt of this document and the Landlord has submitted insufficient evidence to establish that it was served in accordance with section 88 of the *Act*, it was not accepted as evidence for these proceedings.

Legal Counsel for the Landlord stated that the Landlord is willing to proceed with the hearing today, with the understanding that the Landlord will give oral testimony regarding the tenancy agreement naming an individual with the initials "FA".

On August 13, 2020 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to Legal Counsel for the Landlord, via email, on August 13, 2020.

Legal Counsel for the Lawyer stated that he received the Tenant's evidence and that he has had sufficient time to consider it. Legal Counsel argued that the evidence should not be accepted as it was not served in accordance with section 88 of the *Act*.

Section 88 of the *Act* does not permit a party to serve evidence by email. I therefore find that this evidence was not served in accordance with section 88 of the *Act*. As Legal Counsel for the Landlord acknowledged receiving the evidence from the Tenant and that he has had sufficient time to consider it, I find that this evidence was sufficiently served to the Landlord, pursuant to section 71(2)(c) of the *Act*. As the evidence has been sufficiently served to the Landlord, it was accepted as evidence for these proceedings.

The parties were given the opportunity to present submissions regarding jurisdiction. Each party present at the hearing, with the exception of Legal Counsel and the Articled Student, affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Issue(s) to be Decided

Do I have jurisdiction in the matter and, if so, is the Landlord entitled to end this tenancy early and to an Order of Possession?

Background and Evidence

The Landlord and the Tenant agree that:

- the Tenant moved into the rental unit on, or about, March 10, 2020;
- on February 25, 2020 the parties entered into a contract of purchase and sale for the residential complex;
- on May 13, 2020 the parties signed an addendum to the contract of purchase and sale, a copy of which was submitted in evidence;
- the addendum stipulated, in part, that the parties would enter into a "periodic Tenancy lease agreement";
- the addendum declares, in part, that the Tenant can live in unit 714 between May 13, 2020 and July 03, 2020, without paying rent;

- the addendum declares, in part, that the Tenant will act as the “caretaker” of the property;
- the Tenant paid the Landlord a non-refundable deposit of \$20,000.00 which is still being held by the Landlord;
- on May 13, 2020 the Tenant signed a tenancy agreement, a copy of which has been submitted in evidence; and
- on May 14, 2020 the Landlord signed the same tenancy agreement.

The male Agent for the Landlord stated that in addition to the \$20,000.00 non-refundable deposit, the Tenant has paid \$137,955.00 towards the purchase of the property. The Tenant stated that in addition to the \$20,000.00 non-refundable deposit, he has paid over \$227,000.00 towards the purchase of the property.

The tenancy agreement submitted in evidence is for a fixed term, the fixed term of which begins on May 13, 2019 and ends on July 03, 2020. The tenancy agreement declares that the Tenant must vacate the rental unit on July 03, 2020.

The Landlord is attempting to end this tenancy early on the basis that the Tenant is continuing to act as a caretaker even though his employment as the caretaker has ended; the Tenant is permitting new tenants to move into the residential complex; the Tenant is committing theft by collecting rent for units in the residential complex; and that the Tenant is refusing to vacate the rental unit.

On the issue of jurisdiction, Legal Counsel for the Lawyer argued that I have jurisdiction over the tenancy agreement; that the contract of purchase and sale is a separate matter; and that the police have informed the Landlord that the Residential Tenancy Branch has jurisdiction over this matter.

On the issue of jurisdiction, the Agent for the Landlord argued that I have jurisdiction over the matter because the Tenant has acknowledged that he is a tenant in the unit.

On the issue of jurisdiction, the Tenant argued that he has a “registered interest” in the property and, therefore, I do not have jurisdiction over the matter.

Analysis

Before considering the merits of any Application for Dispute Resolution, I must first determine whether I have jurisdiction over the matter.

Residential Tenancy Branch Policy Guideline 27 reads, in part:

A tenancy agreement transfers a landlord's possessory rights to a tenant. It does not transfer an ownership interest. If a dispute is over the transfer of ownership, the director does not have jurisdiction. In deciding whether an agreement transfers an ownership interest, an arbitrator may consider whether:

- money exchanged was rent or was applied to a purchase price;
- the agreement transferred an interest higher than the right to possession;
- there was a right to purchase in a tenancy agreement and whether it was exercised.

Jurisdiction can be refused if the parties have an agreement that grants one party an interest in the property that goes beyond exclusive possession and occupation of the rental unit. If their agreement gives the other party an interest in the land beyond possession, then jurisdiction must be refused.

On the basis of the undisputed evidence, I find that the Landlord and the Tenant entered into a tenancy agreement for the rental unit and a contract of purchase and sale of the residential property. I find that the two agreements are intrinsically linked. This conclusion is based, in large part, on the fact the addendum to the contract of purchase and sale stipulates that the parties will enter into a tenancy agreement and that the Tenant can live in unit 714 for the period between for the period between May 13, 2019 and July 03, 2020, and the parties subsequently entered into a tenancy agreement for that period.

Regardless of the tenancy agreement that exists, I find that the Tenant may have an interest in this property that is beyond the scope of the *Residential Tenancy Act*. Until a court of competent jurisdiction determines whether the Tenant owns all, or part, of this residential complex, I find I do not have jurisdiction to determine whether the Landlord has the right to end this tenancy early on the basis of allegations being made by the Landlord.

Conclusion

I dismiss the Landlord's Application for Dispute Resolution as I do not have jurisdiction in this matter. The Landlord has the option of pursuing this matter through 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 *Act*.

Dated: August 17, 2020