



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM FFL

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The applicant landlord applied for an order of possession for the rental unit based on a Mutual Agreement to End Tenancy (Mutual Agreement) and to recover the cost of the filing fee.

Counsel for the landlord, SM (landlord's counsel), tenant SB (tenant) and counsel for the tenants, AS (tenants' counsel) attended the teleconference hearing. The tenant was affirmed and the email addresses of the parties were confirmed.

Although the tenant and tenant's counsel allege that the tenants were not sufficiently served, I disagree with the tenant and tenants' counsel as I find the tenants were sufficiently served in accordance with the Act. I have based my finding on the fact that two registered mail tracking numbers were submitted in evidence, which have been included on the style of cause for ease of reference. I have confirmed on the Canada Post registered mail tracking website that two notice of delivery cards were sent to both tenants at the rental unit and that based on the evidence before me, the tenants continue to occupy the rental unit. Therefore, pursuant to section 90 of the Act, I find the parties were deemed served 5 days after the registered mail packages were mailed on February 5, 2021, which was February 10, 2021.

In addition, I prefer the submissions of the landlord's counsel over that of the tenant, as I find the photographic evidence before me supports that the tenants were also served by posting two packages at the front door of the rental unit also on February 5, 2021 and I find the tenant's assertion that they did not see either package or receive Canada Post registered mail cards to be highly unlikely. Therefore, I am satisfied on service and the hearing proceeded. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the tenant and landlord's counsel confirmed that the tenants had paid more than one deposit towards the purchase of the home, which is also the rental property. Therefore, given the potential of an interest in the real property by the tenants beyond mere possession, **I must refuse jurisdiction** on the grounds that determination of such interest is within the exclusive jurisdiction of the Supreme Court of British Columbia. Although landlord's counsel submits that the contract no longer exists after 11 extensions and the deposits were non-refundable, I will defer to the Supreme Court of British Columbia who has exclusive jurisdiction to make that determination.

Conclusion

Given the potential of an interest in the real property by the tenants beyond mere possession, I must refuse jurisdiction on the grounds that determination of such interest is within the exclusive jurisdiction of the Supreme Court of British Columbia.

I do not grant the filing fee as I have found that this matter is within the exclusive jurisdiction of the Supreme Court of British Columbia. This decision will be emailed to the parties at the email addresses confirmed during the hearing.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 27, 2021

Residential Tenancy Branch