



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOSA BLUE SKY PROPERTIES (MAIN)
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenants applied for an order directing the landlord to comply with the Act, regulation or tenancy agreement and to recover the cost of the filing fee.

The tenant, AV (tenant), an agent for the landlord, ML (agent), and two property managers for the landlord, DD (property manager 1) and AC (property manager 2) attended the teleconference hearing and gave affirmed testimony. The parties were given time to ask questions and no issues were raised regarding the service of documents.

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 parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

At the outset of the hearing, the name of the landlord agent was replaced by consent of the parties as the tenancy agreement submitted in evidence names a corporate landlord. Therefore, the landlord's name was amended to reflect the correct corporate landlord name pursuant to section 64(3)(c) of the Act.

Issue to be Decided

- Is this application premature?

Background and Evidence

At the start of the hearing, the agent stated that the landlord has filed their own application. The file number for that application has been included on the style of cause for ease of reference. For the purposes of this decision, I will refer to that matter as the August Hearing (August Hearing), which is scheduled to be heard on August 9, 2021 at 1:30 p.m. Pacific Standard Time. The August Hearing relates to a landlord application for \$3,573.94, of which liquidated damages of \$750.00 are listed in the Details of Dispute on the application.

This matter relates to a tenants' application, which states as follows:

I'm breaking a 12 month lease and leaving the apartment on the 28th of February. To that end I am being charged a Liquidation fee. The landlord [name of corporate landlord] in turn has not scheduled any visits (although this could be a market fault) but they haven't made any direct effort to rent my unit and diminish my personal damages. They require that I pay up to two months of rent if the apartment isn't rented and I'm don't believe they have made their part to avoid these charges at all.

[reproduced as written except for anonymizing name for privacy reasons]

Given the above, the parties were advised that I considered this application to be premature as the liquidated damages claim of the landlord has been made and is scheduled to be heard as the August Hearing. As a result, I find this application by the tenants to be premature, which I will address further below.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

I find that the tenants' application is premature, due to the fact that the tenants are already the respondents for the August Hearing, where the landlord has filed a claim which includes the liquidated damages that the tenants have described in this matter.

I also find that the tenants' claim appears to be a dispute of liquidated damages and that the August Hearing will deal with that specific matter at that time. Furthermore, I find that a claim by the tenants to prevent a claim by the landlords is not logical. Therefore, as the tenants have already uploaded evidence for the August Hearing, I will defer to the August Hearing to deal with the liquidated damages and other portions of the landlord's application.

This application is dismissed without leave to reapply as the liquidated damages will be dealt with at the August Hearing. I do not grant the filing fee as this application was premature.

Conclusion

The tenants' application is premature. As the August Hearing will address liquidated damages, I do not grant leave to reapply for this matter.

The filing fee is not granted as this application was premature. This decision will be emailed to both parties at the email addresses confirmed at the outset of 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: May 27, 2021

Residential Tenancy Branch