



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The applicant seeks an early termination of the tenancy pursuant to s. 56 of the *Residential Tenancy Act* (the “*Act*”) and return of their filing fee pursuant to s. 72.

The applicant filed their application as Landlord with respect to the residential property. However, the applicant’s position in at the hearing was that the Director does not have jurisdiction under the *Act*. Rather than refer to the parties as Landlord and Tenant, as is customary with the Residential Tenancy Branch, I will refer to the landlord/applicant as the Applicant and the tenant/respondent as the Respondent.

W.C. and G.C. appeared on behalf of the corporate Applicant. P.O. appeared as the Applicant’s lawyer. B.C. appeared on his own behalf as Respondent and K.C. appeared as advocate for the Respondent. S.C. and L.C. appeared as witnesses for the Respondent.

The Applicant advises having served the Respondent with the Notice of Dispute Resolution and evidence by way of email sent on September 23, 2021. Additional evidence was served by email on October 13, 2021. The parties indicated that they had agreed to accept service by way of email. The Respondent acknowledged receipt of the Applicant’s application materials. I find that the Notice of Dispute Resolution and the Applicant’s evidence was served in accordance with s. 89 of the *Act* on September 23, 2021 and October 13, 2021.

The Respondent indicates having served the Applicant with their responding evidence by way of email sent on October 18, 2021. The Applicant acknowledged receipt of the Respondent’s evidence. I find that the Respondent’s evidence was served in accordance with s. 89 of the *Act* on October 18, 2021.

Preliminary Issue – Applicant's Claim

The Applicant, bringing an application for an early termination under s. 56 of the *Act*, focused their submissions on the question of jurisdiction. Counsel for the Applicant advised that it was their position that the Applicant's were not landlords to the Respondent as the Respondent was a mere licensee, thus the *Act* did not apply. Counsel further advised that they sought a determination of the jurisdiction in advance of seeking an order for possession against the Respondent in the BC Supreme Court. The Applicant further argued, in the alternative, that if the Residential Tenancy Branch does have jurisdiction, it is the *Act* and not the *MHPTA* that applies.

The Applicant's position is unorthodox. The Applicant, in submitting that the Residential Tenancy Branch does not have jurisdiction to grant the relief in which they brought their application, essentially abandoned their claim for early termination pursuant to s. 56 since, in their arguments, the *Act* does not apply. In essence, the Applicant is seeking a declaration on jurisdiction and argues against the jurisdiction to obtain the relief they seek in their very application. The Respondent, for their part, argues that the Respondent is a tenant, though under the *Manufactured Home Park Tenancy Act* (the "*MHPTA*") and not the *Act*. I find that the relief sought in the Applicant's application, namely the early termination of a tenancy, was incidental to the true reason the Applicant's appeared before the Residential Tenancy Branch, which was for a declaration on jurisdiction.

Based on the application before me for consideration, the Applicant sought an order for possession pursuant to the *Act* but argued against their own application at the hearing by asking that I not apply the *Act*. Thus, I find that the Applicant has abandoned their claim for an order for possession under the *Act*. Accordingly, I dismiss the Applicant's application without leave to reapply.

There were many submissions by the parties on whether the Director does, or does not, have jurisdiction, the applicability of either the *Act* or the *MHPTA*, and the history of the present circumstances. I am not, however, inclined to make any orders with respect to this dispute on the basis that the Applicant seeks a declaration on jurisdiction, which is not within the power of the Director. Part 2, Division 1 of the *Act* sets out the Director's ability to make orders with respect to disputes in which the *Act* applies. As an administrative tribunal, the Residential Tenancy Branch's jurisdiction springs from and is defined by the *Act* and the *MHPTA*. Nowhere does the *Act* specify that the Director has the authority to grant declaratory relief. The power to grant declaratory relief springs

from the inherent jurisdiction of superior courts (see *British Columbia Civil Liberties Association v Canada (Attorney General)*, 2019 BCCA 228 at para 259 to 261).

On the basis that the *Act* does not provide the Director the ability to grant declaratory relief, I decline to make any pronouncements on whether the Residential Tenancy Branch has jurisdiction. As the Applicant is not asking that I apply the *Act* or the *MHPTA*, I need not make any determination on jurisdiction in any event. If the Applicant wishes to pursue an order for possession on the basis that the Respondent is a licensee, they are free to do so in the proper forum, being the BC Supreme Court.

Conclusion

I dismiss the Applicant's application for an early end to the tenancy without leave to reapply on the basis that the Applicant is not asking the Director apply the *Act*. I decline to decide on jurisdiction on the basis that such relief is declaratory in nature, which is not permitted by the *Act*. As the Applicant is asking that I not apply the *Act*, I need not make a determination on jurisdiction in any event.

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: October 27, 2021

Residential Tenancy Branch