Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUNTER'S RANGE RESORT LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNRL, FFL

Introduction

This hearing dealt with the Applicants' application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*") on August 24, 2021. The Applicants applied to enforce a One Month Notice to End Tenancy for Cause (the "Notice") issued on June 25, 2021, for a monetary order for unpaid rent and recover the filing fee paid for the application. The matter was set for a conference call.

The Applicants, the Applicants' Counsel (the "Applicant") and the Respondent attended the hearing and were each affirmed to be truthful in their testimony. The Applicant and Respondent were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

At the outset of the hearing, the Applicant submitted that the jurisdiction/authority of the Residential Tenancy Branch (the "RTB") to hear this matter needed to be addressed prior to proceeding with the hearing. The Applicant testified that the Respondent had filed for a hearing before the Supreme Court of British Columbia (the "Supreme Court") in relation to this tenancy. The Applicant provided a copy of the Notice of Civil Claim, submitted to that court dated March 19, 2021, into documentary evidence.

The Respondent agreed that they had filed a claim with the Supreme Court against the Applicant.

The Applicant testified that the matter before the Supreme Court was an unjust enrichment claim with a requested compensation in the amount of $250,000.00. The Applicant submitted that their claim before me in these proceedings for an order of possession and a monetary order for unpaid rent was not related to the Respondent's claim before the Supreme Court and that the RTB did have the jurisdiction/authority to hear their claim as neither of these matters were before the Supreme Court.

The Respondent testified that they disagreed with the Applicant as their occupation of the rental unit and the rent due were directly related to their claim before the Supreme Court.

Both the Applicant and the Responded agreed that there is no signed tenancy agreement between them and that they entered into a verbal agreement for a Rent-to-Own payment of $1,350.00 per month that started in 2017.

The Applicant asserted that the Rent-to-Own agreement ended when the Respondent filed for their claim with the Supreme Court and that this made their agreement convert to a residential tenancy, which falls under the jurisdiction/authority of the RTB. The Applicant testified that the Respondent is past due in their monthly payments in the amount of $28,250.00 for the period between June 2020 and January 2022.

The Respondent testified that they are still in a Rent-to-Own agreement with the Applicant and that the monthly payments of $1,350.00 have been deferred due to a secondary agreement which they have with the Applicant that applies these payments to the cost of the purchase of the property. The Respondent testified that they have a signed agreement with the Applicant for the deferral of these payments but that they did not submit a copy of that agreement into documentary evidence for these proceedings.

The Applicant agreed that they did enter into a monthly payment deferral agreement with the Respondent, in the hope that this would help them obtain a mortgage to purchase the property.

The Applicant testified that they are also seeking to end the tenancy due to damage caused by the Respondent to the property. The Applicant testified that they received a letter from BC Hydro, dated July 30, 2020, stating that the Respondent had damaged

BC Hydro equipment when they removed the BC Hydro meter without the consent or knowledge of BC Hydro and the Applicant. The Applicant testified that due to this, BC Hydro had disconnected electrical service to the property. The Applicant submitted a copy of the BC Hydro letter into documentary evidence.

The Applicant was asked if they had attended the property to assess and repair the damage. The Applicant testified that they had not attended the property since receiving this letter, as they were in a Rent-to-Own agreement at the time of receiving this letter, so it was the Respondent's problem to fix.

The Respondent agreed that they had removed the BC Hydro meter without the consent or knowledge of BC Hydro or the Applicant. The Respondent also agreed that there is currently no electricity being supplied to the property by BC Hydro and that the electrical service to the property was removed in July 2020.

The Respondent testified that they had removed the hydrometer to install solar panels, that they had used a licensed electrician to do the work, and had the work inspected by BC Hydro in the summer of 2020. The Respondent agreed that they should have informed BC Hydro and the Applicant before work was started however, they did not think of that at the time as they had hired a professional to do the work and assumed that everything had been handled correctly. The Respondent confirmed that all the electrical power for the property comes from the solar panels they installed.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Section 58(2d) of the *Act* stipulates that I must resolve an application for dispute resolution unless that dispute is linked substantially to a matter that is before the Supreme Court, stating the following:

> ***Determining disputes***
> *58 (2) Except as provided in subsection (4) (a), the director must not determine a dispute if any of the following applies:*
>
> > *(a) the amount claimed, excluding any amount claimed under section 51 (1) or (2) [tenant's compensation: section 49 notice], 51.1 [tenant's compensation: requirement to vacate] or 51.3 [tenant's compensation: no*

right of first refusal], for debt or damages is more than the monetary limit for claims under the Small Claims Act;
(b) the claim is with respect to whether the tenant is eligible to end a fixed term tenancy under section 45.1 [tenant's notice: family violence or long-term care];
(c) the application for dispute resolution was not made within the applicable time period specified under this Act;
(d) the dispute is linked substantially to a matter that is before the Supreme Court.

I accept the agreed-upon testimony of these parties that this living arrangement started as a verbal Rent-to-Own agreement in 2017, and that a financial dispute has arisen between these parties in relation to that agreement.

During these proceedings, I declined authority over the Applicant's monetary claim, finding that the matter of monies owed was substantially linked to the financial claim that was before the Supreme Court.

Initially, I accepted jurisdiction of the Applicant's request for an order of possession as the possession of the property was not part of the Respondents claim filed with the Supreme Court. However, based on the submissions of the parties during these proceedings, I find that there is also a link between this claim for an order of possession before me, and the claim that is before the Supreme Court.

Specifically, in regard to the Applicant's request for an order of possession, they are seeking to end the tenancy for two reasons, namely:

The Respondent has repeatedly paid rent late, with the Applicant testifying that the rent had been paid late 15 times between June 2020 and January 2022. However, both these parties agreed that they were in a Rent-to-Own agreement for a least 10 of these 15 payments periods and there is no clear date as to when or even if the Rent-to-Own agreement between these parties ended.

The other reason for ending the tenancy presented by the Applicant is that the Respondent damaged the property in July 2020, a time in which both these parties agreed that they were in a Rent-to-Own agreement.

As the Residential Tenancy Branch does not have jurisdiction over Rent-to-Own agreements, I must decline to accept jurisdiction or authority over the Applicant's dispute with the Respondent for any issues that fall under the timeline of that Rent-to-Own agreement.

Finally, these parties offered conflicting verbal testimony as to whether or not the Rent-to-Own agreement between them had legally ended, and if it had ended, they did not agree or provided any documentary evidence of a specific date this living arrangement converted into a residential tenancy.

Therefore, I must amend my verbal decision rendered during these proceedings to a finding that all the matters contained in the Applicant's application are substantially linked to a matter that is before the Supreme Court.

Therefore, I find that I do not have the authority to adjudicate this matter.

Conclusion

I find that I do not have the authority to adjudicate this matter, as it is substantially linked to a matter before the Supreme Court of British Columbia. I dismiss the Applicant's application.

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: January 11, 2022

Residential Tenancy Branch