



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNR, FF*

Introduction

This hearing dealt with two applications both made by the landlord. Both applications are for a monetary order for rent owed, for the cost of repairs and for the recovery of the filing fee. The landlord stated that he made two applications because the tenant had entered into two fixed term tenancy agreements.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord had an interpreter attend to assist him. Both parties acknowledged receipt of the evidence of the other party.

Upon consideration of the documentary evidence, a preliminary issue was raised and repeated at the hearing. The tenant was of the position that I did not have jurisdiction to resolve this dispute.

Issues to be decided

Does the *Residential Tenancy Act* apply to the parties, and do I have jurisdiction to resolve this dispute? Is this dispute linked substantially to a matter that is before the Supreme Court?

Background and Evidence

The applicant landlord WM filed two tenancy agreements into evidence. Both involve the same tenant at the same rental unit. However, the rental amounts and the landlords named on the agreements, differ.

The first tenancy agreement filed into evidence by the landlord has a start date of September 30, 2020 and an end date of September 30, 2021. The landlords named are WM and HH (husband and wife). The monthly rent is \$4,800.00 payable on the first of each month.

The second tenancy agreement filed into evidence by the landlord, has a start date of October 31, 2021, and an end date of October 31, 2022. The landlords named are WM and HH (husband and wife). The monthly rent is \$5,000.00 payable on the first of each month.

Both the tenancy agreements described above are unsigned.

The tenant filed a copy of his tenancy agreement that was signed by both the landlord and the tenant. He agreed that he had spoken to WM initially and was directed to deal with HH. The landlord named on his tenancy agreement is HH. The tenant stated that his tenancy started on September 30, 2020, as a fixed term tenancy and was renewed at the end of the term. The start date of the renewed tenancy is October 15, 2021, and is a month to month tenancy. The monthly rent is \$3,000.00 payable on the 15th of each month. The tenant stated that the tenancy ended on January 15, 2023 and through the tenancy of 2 years and 4 months, he paid rent to HH.

The tenant testified that HH conducted a move out inspection at the end of tenancy and returned the full security deposit to the tenant upon moving out.

The landlord stated that HH committed fraud by creating a separate tenancy agreement for a lower rent and by collecting a lower rent from the tenant. WM has applied for a monetary order for the difference in rent and for the cost of repairs resulting from damage to the rental unit by the tenant, in the total amount of \$29,000.00.

The landlord testified that HH did not own the rental unit. The owner is the mother of WM and he acted on her behalf. However, WM did admit that HH and their daughter are named as trustees for this property.

WM made application in Supreme Court to resolve issues pertaining to ownership of the rental property and rent received. On December 16, 2022, a judgement was made ordering HH to pay rent received for the rental of this property, to a mortgage company named in the judgement. This arrangement was ordered until further order of the Supreme Court. The landlord filed a copy of this order into evidence.

Analysis

Section 58.2.c of *Residential Tenancy Act* and Section 27 of the *Residential Tenancy Policy Guideline* addresses the jurisdiction of the *Residential Tenancy Act*. This section states that if a dispute is linked substantially to a Supreme Court action, then the arbitrator may decline jurisdiction.

Based on the sworn testimony of both parties and the documentary evidence filed by both parties, I find that this dispute is linked substantially to a matter that is before the Supreme Court of BC. Therefore, I find that I do not have jurisdiction in this matter.

Conclusion

The applications the landlord are dismissed with leave to reapply pending the decision of the Supreme Court of BC.

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: February 14, 2023

Residential Tenancy Branch