

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under section 46 of the Act

This hearing also dealt with the Landlord's Application for Dispute Resolution under the Act for:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

LM, together with legal counsel NM and AB attended the hearing for the Landlord.

Tenant NB along with legal counsel AS also attended the hearing.

At the conclusion of the hearing the parties indicated their intention to settle their dispute.

Preliminary Matters

Prior to assisting the parties in the settlement of their dispute, it was necessary to determine whether this matter was within the ambit of the Residential Tenancy Act, and hence, whether I have jurisdiction over the application.

The Landlord is the trustee of a trust established by a university (the University). The building in which the rental unit is located was erected by the trustee under the terms of a lease, in which the University leased the land to the trustee for a term of 99 years.

Paragraph 4(b) of the Act provides that the Act does not apply to "living accommodation owned or operated by an educational institution and provided by that institution to its students or employees".

There are thus two questions that need to be answered in the affirmative for me to find I lack jurisdiction:

1. Is the living accommodation owned or operated by the University?
2. Is the living accommodation provided by the University to its students or employees?

With respect to the second question, I find that the University does provide the living accommodation to its students or employees – in this case, the Tenant. The University created the trust structure and directed the Trustee to erect the building containing the rental unit. The University further directs, in the lease to the Trustee, that the Trustee rent the units, with some limited exceptions, to members of the University community. It seems clear that at least part of the purpose of the University was to create housing for its students and employees. While the University community is a broader group than students and employees of the University, students and employees would form a substantial part of that category. And, in fact, the Tenant is an employee of the University.

However, with respect to the first question, I find that the rental unit is neither owned nor operated by the University. The Trustee is a separate legal person from the University, and operates the residential property. And while the University is the legal owner of the land on which the rental unit rests, that land was leased to the Trustee for a lengthy term. The buildings on the land were erected by the Trustee and are owned by the Trustee. While the University stands to own the buildings (if still standing) at the end of the lease, it does not own them now, and may well never do so.

Section 5 of the Act prohibits landlords and tenants from avoiding or attempting to contract out of the Act. There is, perhaps a fine line between avoiding the Act – or here, avoiding the exemption from the Act – and creating structures to which the Act applies. As the Landlord has previously argued that the Act does not apply to the living accommodation provided by it, it does not appear that avoiding the effect of the Act was one of the purposes of the University erecting the Trust and leasing the land to the Landlord. The University has ordered its affairs for its own purposes, and that order now places the living accommodations provided by the Landlord within the Act.

I therefore find I have jurisdiction over this matter.

Analysis

Under section 63 of the Act, the Arbitrator may assist the parties to settle their dispute. If the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During this hearing, the parties reached an agreement to settle their dispute.

Both parties agreed to the following terms of a final and binding resolution of the Tenant's application and the issues in dispute arising out of this tenancy at this time and that they did so of their own free volition and without any element of coercion:

1. The Tenant agreed to pay on September 5th, 2024, a total of \$7,191, representing \$5,522 in back rent; \$1,604 in rent due for September 2024, and \$65 for parking for September to the Landlord.
2. Both parties agreed that these particulars comprise the full settlement of all aspects of both the Landlord's and Tenant's current applications for dispute resolution.

Conclusion

In order to give effect to the above settlement reached between the parties, I grant a Monetary Order in the Landlord's favour in the amount of \$7,191.00. The Landlord is provided with this Order and the Tenant must be served with a copy of this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: September 5, 2024

Residential Tenancy Branch