

DECISION

Introduction

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

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order for the Landlord to provide services or facilities required by law under section 27 of the Act
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to change the locks to the rental unit under section 70(2) of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- an order regarding a rent increase above the amount allowed by law

The Tenant attended the hearing. The Landlord B.C.H.M.C.'s counsel attended the hearing on behalf of the Landlord, and will be referred to as the Landlord for the purpose of this decision.

Jurisdiction – Monetary Claim

Section 58(2)(d) of the Act says that an arbitrator must not resolve a dispute if the dispute is substantially linked to a matter that is before the Supreme Court.

At the start of the hearing, the Landlord advised me of the Tenant's case filed before the Supreme Court of British Columbia against Landlord A.K.. The Landlord provided copies of the Supreme Court application, pleadings, and response documents as evidence that the matter before me is substantially linked to the matter before the Supreme Court.

The Landlord submits that the Tenant is seeking monetary compensation in Supreme Court based on the same factual basis as is before me for the Tenant's monetary claim under section 67 of the Act.

The Tenant submits that the Supreme Court proceeding is regarding the personal tort of negligence, of which the RTB has no jurisdiction to determine. The Tenant submits that although the factual basis is the same, the Tenant seeks compensation for the respondent Landlord's negligence in Supreme Court, while the Tenant seeks compensation for breaches of the Act from the residential tenancy branch. I have reviewed the parties' evidence and submissions with regard to my jurisdiction to determine the Tenant's claim for a monetary order under section 67 of the Act.

I find that in the petition filed at the Supreme Court the Tenant seeks monetary compensation from a Respondent Landlord named in both the Supreme Court and RTB filings, based on the Landlord's negligence and failure to act reasonably to address the Tenant's concerns about second hand smoke exposure. This, I find is reasonably similar to the Tenant's claim made under section 67 of the Act, in which the Tenant seeks compensation for damage or loss related to second hand smoke exposure due to the Landlord's failure to comply with the Act, Regulation, or Tenancy Agreement. Both parties testified that the matter is still active before the Supreme Court.

Based on the testimony of the parties and the evidence provided, I am satisfied the matter before the Supreme Court is substantially linked to matter before me. 58(2) of the Act prevents the director or his delegate from resolving disputes substantially linked to matters before the Supreme Court. Section 58(4) of the Act definitively grants the Supreme Court the jurisdiction to do so. Accordingly, I find that the Residential Tenancy Branch does not have the jurisdiction to resolve this dispute at this time.

Therefore, the Tenant's application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, until such time as the Supreme Court proceeding is concluded.

Preliminary Matter – Service Issues

The Tenant's application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement has been dismissed under section 58 of the Act, as I have found this matter is substantially linked to a proceeding before the Supreme Court and decline to proceed for lack of jurisdiction.

The Tenant's remaining applications are as follows:

- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided
- an order for the Landlord to make repairs to the rental unit
- an order for the Landlord to provide services or facilities required by law
- an order to suspend or set conditions on the Landlord's right to enter the rental unit
- authorization to change the locks to the rental unit
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement

- an order regarding a rent increase above the amount allowed by law

The above listed application issues are dismissed with leave to reapply, for the Tenant's failure to prove effective service of the Notice of Proceeding packages and evidence in accordance with the Act, Regulation, and Rules of Procedure.

I note that during the hearing, I allowed the parties to give testimony on the issue of the Tenant's dispute of rent increase, as this issue was applied for under a separate file than the primary application. Upon my review both files, I find that the same service issues, namely the Tenant's service of documents by email, exist in both files, and the problems with this service must be addressed on the whole. Therefore, the issue of the disputed rent increase is not determined by this decision.

The Tenant testified that all their documents, including both Notice of Dispute Proceeding Packages and all of their various evidence packages were served to the respondent Landlord's by email. The Tenant testified that they did not serve, nor attempt to serve, these documents in any other way provided for under the Act to the Landlord's address for service as provided on the tenancy agreement or other tenancy documents.

The Landlord advised that none of the named respondent Landlord's have provided the Tenant with an email address for service, nor have they consented to receive any legal documents related to this tenancy by email.

Section 43 of the Regulation says that documents may be served on a person by email to an email address for service that is provided as an address for service by that person.

I find that the Tenant did not submit any evidence that any of the respondent Landlord's provided an email address for service at any time during this tenancy.

The Tenant referred to Policy Guideline 12, claiming that because there is a history of communication by email between the parties, the email service should be found effective.

Tenancy Policy Guideline 12 states the following with regard to email service:

If there has been a history of communication between parties by email, but a party has not specifically provided an email address for service purposes, it is **not advisable to use email as a service method. If no other method of service is successful, a party may apply for a substituted service order** (RTB-13 - Application for Substituted Service), asking for an order allowing service by email, and provide evidence of a history of communication between the parties at that email address. **Parties may face delays or risk their application being dismissed if service is not affected in accordance with the legislation.** (emphasis added)

I find that the Tenant did not attempt to serve the respondent Landlord's in any way that is allowed under sections 88 and 89 of the Act, such as by registered mail to the Landlord's physical address for service, before emailing the documents without an email address for service being provided.

I find that the Tenant took it upon themselves to serve their documents by email without any prior approval or indication that service by email would be accepted, and without even attempting to properly serve the documents in accordance with the Act to an address for service that was in fact provided by the Landlord.

The Landlord's counsel testified that while they acknowledge receiving various emails from the Tenant, they cannot confirm that any of the named respondent Landlord's were served with the Notices of Proceeding or the Tenant's evidence, as these parties did not provide email addresses for service.

The Landlord's counsel notes that the Tenant sent numerous emails with various attachments and links for evidence, which are not organized or clearly labelled in any legible fashion. The Landlord's counsel believes they have not been served with all of the Tenant's evidence and claims that the named Respondent Landlord's have certainly not been served with the Tenant's evidence.

I find the Tenant did not provide any proof of service of their emailed evidence, such as copies of these emails and noted attachments. Even if I found that email service was permitted, which I do not find in this case, the Tenant has not adequately proven that their evidence and digital evidence has been effectively served in an organized, clear, single package as is required under Rules of Procedure 3.13.

Rules of Procedure 3.5 says if the applicant cannot demonstrate that each respondent was served as required by the Act and the Rules of Procedure, the director may adjourn the application or dismiss it with or without leave to reapply.

I find that the Tenant has failed to demonstrate that the Notice of Dispute Proceeding Packages and evidence were served to the Landlord as required by the Act and Rules of Procedure.

I find that the Landlord has not provided an email address for service, and that service by the methods allowed for under sections 88 and 89 of the Act were not attempted, successfully or unsuccessfully, by the Tenant before resorting to an unapproved method of service.

Therefore, in accordance with sections 88 and 89 of the Act, and Rules of Procedure 3.5, the Tenant's application for dispute resolution is dismissed, with leave to reapply.

I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable time limit under the Act.

Conclusion

The Tenant's application for a monetary order under section 67 of the Act is dismissed, as I have declined to proceed for lack of jurisdiction as the matter is substantially linked to a matter before the Supreme Court.

The Tenant's remaining application is dismissed in its entirety, with leave to reapply.

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: October 7, 2024

Residential Tenancy Branch