Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI

Introduction

This matter dealt with applications by the Tenants to dispute an additional rent increase. At the beginning of the hearing, the Landlords argued that the Residential Tenancy Branch did not have jurisdiction to hear this dispute. Consequently, I advised the Parties that I would hear evidence and submissions on the issue of jurisdiction only and give a written decision before pursuing the Tenants' applications further.

Issue(s) to be Decided

1. Does the Residential Tenancy Branch have jurisdiction to hear this dispute?

Background and Evidence

The property that forms the subject matter of this dispute is water and foreshore lots along the banks of the Fraser River in Maple Ridge. The Tenants claim that in the 1970s a system was instituted in which they were required to purchase permits for a two year period. The permits entitled the holder to the use of a designated foreshore and water lot. The Landlords are now seeking to replace the permit system with lease agreements for a 4 year term that provide for significant rent increases each year. It is these proposed rent increases that the Tenants dispute.

The Tenants argued that the *Residential Tenancy Act* applies to this dispute because the permit areas are used for residential purposes. One of the Tenants, K.B., claimed that another Tenant resides on the permit area however he admitted on further questioning that it was only a small portion of the residence or a patio off of it that encroached on the permit area. The Tenants admit that they own residences that are located "upland" on separate pieces of property. The Tenants argued however, that the foreshore lots are "extensions of their residences." In particular, the Tenants argued that they had a right to access the foreshore lots (regardless of the permits) due to their riparian rights as "upland property owners." The Tenants also argued that the value of their foreshore leases are assessed by B.C. Assessment Authority on the basis of residential values. The Tenants admitted that they were unsure whether for the purposes of B.C. Assessment, recreational property is included in this category or not.

The Landlords argued that this matter does not fall under the *Residential Tenancy Act* because the subject property is not rented for a residential purpose. The Landlords said each of the Tenants owns their own residence on other property that is separate and apart from the foreshore lots. The Landlords claim that the foreshore lots are recreational property and are used for the sole purpose of gaining access to the water on which many Tenants have erected a dock for moorage. The Landlords claim that the permit holders are not entitled to reside on the property and there are no living accommodations on the property. The Landlords argued that the riparian rights only conferred on an owner of upland property the right to access *deep water* and did not confer any right to use the foreshore area. In other words, the Landlords claimed riparian rights were granted for the purpose of navigation and not for residential purposes. The Landlords said the sole reason the value of the permits are assessed by B.C. Assessment Authority is so that the municipalities can collect taxes from the holders for the use of municipal services.

The Landlords also argued that under s. 91(b) of the *Constitution Act*, the federal government is granted the exclusive jurisdiction over public lands (or lands that it owns). Counsel for the Landlords argued that provincial law cannot legally affect a vital part of federal property rights. Counsel for the Landlords also argued that should the *Residential Tenancy Act* be applied to the subject lands and in particular the provisions dealing with rent increases, this would substantially interfere with the federal government's ability to determine to whom it could lease the property. The Tenants claimed that they discovered that many foreshore areas in the province are owned by the Province and leased to the Landlords. As a result, the Tenants argued that the subject property may not fall under the exclusive jurisdiction of the federal government.

Analysis

Section 2(1) of the Act states as follows:

> "Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property."

Section 1 of the Act includes the following definitions:

> "***Tenancy Agreement*** means an agreement, whether written or oral, express or implied, between a landlord and tenant respecting possession of a rental unit, use of common areas and services and facilities and includes a licence to occupy a rental unit."

> "***Rental unit*** means living accommodation rented or intended to be rented to a tenant."

"***Residential Property*** means,

> (a) a building, part of a building or a related group of buildings, in which one or more rental units or common areas are located;
> (b) the parcel or parcels on which the building, related group of buildings or common areas are located;
> (c) the rental unit and common areas; and
> (d) any other structure located on the parcel or parcels.

I find that none of the foreshore lots has living accommodations (with the exception of an alleged encroachment of one owner's residence) and I also find that the lots are not rented to the Tenants by the Landlords as living accommodations. Although counsel for the Tenants argued that storage sheds owned by some Tenants could be "living accommodations" because that term is not defined by the Act, I find that this interpretation does not stand to reason. The definitions set out above (and the subject matter of the legislation) make it eminently clear that living accommodations mean one's residence. The Tenants' evidence was that any structures on the lots such as sheds were their personal property were used solely for the purpose of storing their personal belongings. Consequently, I find that there are no living accommodations on the foreshore lots.

The Tenants also argued that the foreshore lots are extensions of their residences that are located upland. However, section 2 of the Act (and the definition of rental unit and residential property) requires that ***the rented property*** has on it living accommodations that are also rented by the Landlord. I find that the Landlords do not rent living accommodations to the Tenants on the foreshore lots. In this case, the Tenants own their living accommodations which are located on separate and distinct land.

In summary, the purpose of the *Residential Tenancy Act* is to govern the rental of living accommodations and the common areas on which the living accommodations are situate. In the absence of any evidence that the Landlords lease living accommodations to the Tenants, I find that this matter is not one that falls within the definition of s. 2 of the *Residential Tenancy Act*. As I have determined that there is no jurisdiction to hear the Tenants' application for the reasons set out above, I find that it is unnecessary to consider the Landlords' constitutional argument.

Conclusion

The Tenants' application is dismissed without leave to reapply due to a lack of jurisdiction. 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: December 14, 2011.

Residential Tenancy Branch