



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Fan Tower South Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This review hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order Of Possession – Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation for loss – Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. At the onset of the Hearing Tenant’s counsel raised a preliminary issue of jurisdiction.

Issue(s) to be Decided

Is the dispute substantially linked to a matter before the Supreme Court?

Background and Evidence

The following are undisputed facts: The tenancy started in December 2011. Monthly rent of \$750.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$375.00 as a security deposit. A previous Decision dated November 25, 2014 provided the Landlord with an order of possession and a monetary order in relation to unpaid rent for October and November 2014. On November 28, 2014 these orders were stayed by the Supreme Court and liberty was given to the

Landlord to apply to set aside or vary the stay. The Landlord has not made such an application to the Supreme Court.

On January 15, 2014 the Landlord applied to the Residential Tenancy Branch for an order of possession and unpaid rents for October, November, December 2014 and January and February 2015. The Decision on these claims, dated February 4, 2015, granted an order of possession and a monetary order for unpaid rent. This Decision was set aside in a Review Consideration Decision dated March 2, 2015 on the basis that the matter of whether the stay had been lifted could not be determined on review and that the Landlord did not provide all the evidence available on the subject of the stay.

There is also no dispute that the Landlord refused to accept the Tenant's rent payments for December 2014 and onwards. Landlord's Counsel submits that these rents were refused because of the stay, as the tenancy was ended and as the Tenant refused to include payment for the rents owing for October and November. Landlord's Counsel argues that the stay of proceedings on the order of possession and monetary order for unpaid October and November 2014 rent does not prevent the Landlord from having these matters resubmitted and determined under the Act.

Tenant's Counsel argues that the matter of possession of the unit and the payment of all rents is a matter substantially linked to the Supreme Court stay. Tenant's Counsel argues that the stay on the order of possession remains effective and that the Landlord's refusal to accept the rent payments amounts to estoppel. Tenant's Counsel argues that the Landlord is attempting to move behind the stay to obtain what would otherwise only be available through further proceedings at the Supreme Court. Tenant's Counsel argues that all continuing rents are directly linked to the stay as this is the basis for the Landlord's refusal to accept continuing rent.

It is noted that the Landlord's evidence indicates that a 10 day notice to end tenancy dated January 2, 2015 was given to the Tenant and the Tenant did not dispute the

Notice. The amount on the Notice includes unpaid rent for October and November 2014 but does not include unpaid rent for December 2014, January 2015 or February 2015.

Analysis

Section 58 of the Act provides that a dispute must be determined unless the dispute is linked substantially to a matter that is before the Supreme Court. Given the undisputed evidence that the matter of possession of the unit and unpaid rent for October and November 2014 are the subject of a Supreme Court stay, I find that the dispute over these issues are substantially connected to a matter before the Supreme Court and that I may not consider this part of the Landlord's application. Given the stay on the order of possession of the unit, I also find that the continuing dispute over possession of the unit remains substantially linked to a matter at the Supreme Court.

As continuing rents are material to the matter of possession of the unit and as the Landlord has refused to accept continuing rents because of the stay on the past rents owed I find that the Landlord by its own act has ensured that the matter of continuing rent payments remain substantially connected to the stay on the possession of the unit. I find therefore that I may not consider the Landlord's application in its entirety as I have no jurisdiction over the disputed matters therein.

Conclusion

I decline to consider the Landlord'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: April 20, 2015

