Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession and for a monetary order for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant stated that a few days before this hearing, he had filed evidence at the Residential Tenancy Branch office regarding an application to the Supreme Court of Canada to resolve a dispute with the landlord at this rental address. The tenant was unable to provide information on the date and method of service of this evidence at the Residential Tenancy Branch Office or to the landlord. I did not have the tenant's evidence before me and there was no evidence from the tenant uploaded into the online system. The landlord stated that he had not received any documents from the tenant and was unaware of any application to the Supreme Court of Canada.

The tenant raised the issue of jurisdiction and quoted section 58.2.c of *Residential Tenancy Act* which 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. The tenant also stated that he is a business partner of the landlord and has interest in the ownership of the property.

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? Does the tenant have interest in the property that is greater than the right to possession?

If the *Residential Tenancy Act* applies, is the landlord entitled to an order of possession for unpaid rent and to a monetary order for the filing fee?

Background and Evidence

The landlord testified that he purchased this property from the parents of the tenant in September 2011. The tenant was in occupation of the property at that time. There is no written tenancy agreement and the parties offered different interpretations of their relationship.

The landlord stated that the rental property consists of two residential lots, plus 10 acres of waterfront property which he purchased at 1.7 million and agreed to allow the tenant to rent the property at $15,000.00 per month.

The tenant stated that there was no tenancy agreement but he was allowed to stay on the property as a future partner in the development of the property. The tenant stated that he negotiated with his parents, a lower sale price for the landlord on condition that he (the tenant) would have an interest in the property and be a business partner in the future development of the property. The tenant added that the arrangement was verbal and that he had no written agreement documenting the arrangement that he would be a partner and have an interest in the property.

The landlord denied any such arrangement with the tenant and stated that he was the sole owner of the property. The tenant agreed that the landlord was the only person on title.

The tenant stated that just a few days prior to this hearing, he filed an application to the Supreme Court of Canada to resolve this dispute. The tenant was not able to provide details of his application and stated that his lawyer advised him that this matter was out of the jurisdiction of the Residential Tenancy Branch. The tenant did not even know the date of the application made to the Supreme Court.

The tenant also stated that he paid rent in the amount of $15,000.00 for the first month of tenancy. The landlord is applying for an order of possession effective two days after service on the tenant and for a monetary order in the amount of $50.00 for the filing fee.

Analysis

A tenancy agreement is a transfer of an interest in land and buildings, or a license. The interest that is transferred, under section 1 of the Acts, is the right to possession of the residential premises.

If the tenant takes an interest in the land and buildings which is higher than the right to possession, such as part ownership of the premises, then a tenancy agreement may not have been entered into. In such a case the Residential Tenancy Branch may decline jurisdiction because the *Act* would not apply.

In this case, the parties agreed that that the landlord is the sole owner of the rental property and holds the title in his name alone. The tenant testified that he had a verbal agreement with the landlord regarding a partnership in the development of the property and the landlord denied having made any such agreement with the tenant.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The tenant did not file any evidence to support his testimony that he has interest in the property which is higher than the right to possession. The tenant also agreed that the arrangement was verbal and there was no signed paper work to document the arrangements. The landlord denied any such arrangement and therefore in the absence of other evidence to support the tenant's testimony, I find that the tenant did not have an interest in the property that is higher than the right to possession and I further find that the relationship between the parties is that of landlord and tenant.

The tenant also stated that this matter is before the Supreme Court of Canada. Section 58.2.c of *Residential Tenancy Act* 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.

The tenant did not file any documents to support his testimony that this matter is substantially liked to a Supreme Court action. In addition, the landlord stated that he was not notified of any such action. Again, in the absence of other evidence to support the tenant's claim, I find on a balance of probabilities that the tenant has not proven that this matter is substantially linked to Supreme Court action.

Based on the above findings, I have determined that this matter falls within the jurisdiction of the Residential Tenancy Branch and as such, I have the authority to hear and make a decision in matters pertaining to this dispute.

Based on the sworn testimony of the both parties, I accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy for unpaid rent, on February 26, 2015 and did not pay rent within five days of receiving the notice to end tenancy nor did the tenant make application, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the notice. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

Since the landlord has proven his case he is also entitled to the filing fee of $50.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant and a monetary order for **$50.00.**

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: June 18, 2015

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Residential Tenancy Branch