



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, OPB, MND, MNR, MNDC, O, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's legal counsel.

At the start of the hearing legal counsel for the landlord submitted that legal counsel for the applicant in the Application crossed with the landlord's Application has consented to an adjournment of this hearing. Legal counsel for the landlord indicated that the reason for the request is that the applicant for the cross Application has agreed to vacate the rental unit by October 7, 2016; that the landlord has commenced a claim in the Supreme Court of British Columbia (the Court) seeking a monetary award and that a writ of possession be issued against the applicant of the cross Application.

However, neither party had submitted any relevant evidence to confirm any of this information. In fact, while the landlord had named a different person as their legal counsel in their Application for Dispute Resolution there was no confirmation that MT had authority to act on behalf of the landlord.

I ordered MT to submit, by fax no later than 12:00 noon on October 4, 2016, confirmation from his firm that he had authority to act on behalf of the landlord; all materials related to the Court claim; and confirmation from legal counsel for the applicant from the cross Application of the agreement to an adjournment. All material was submitted by the deadline.

Included in this material the landlord's legal counsel provided a letter from the cross Application applicant's legal counsel dated October 4, 2016 confirming that they "consent that the hearing currently set for October 4, 2016, be adjourned to November 24, 2016."

However, I find that the applicant from the cross Application file is not the named respondent to the landlord's Application for Dispute Resolution and as such legal counsel for the applicant of the other Application for Dispute Resolution has no standing

to agree to an adjournment on this file. Despite this finding I may still consider the landlord's request for an adjournment.

Prior to consideration of the request for an adjournment, I have considered two other preliminary matters. Specifically, whether the two Applications that were scheduled to be heard as cross Applications should, in fact, be heard as cross Applications and whether I can proceed on these matters while there is a current action in the Court.

Residential Tenancy Branch Rule of Procedure 2.11 allows a respondent named in an Application for Dispute Resolution to counter the Application or respond to a related Application by making a cross-application by filing their own Application for Dispute Resolution.

In the case before me I note that this Application for Dispute Resolution was submitted by the landlord who named a respondent that is different than the person named as the applicant in the Application that was already scheduled to be heard. As such, I find that the Application scheduled to be heard with this Application cannot be considered a cross Application to the original Application.

As a result, I order that the Applications should not be crossed and have written separate decisions for each Application.

Legal counsel for the landlord has submitted documentation to confirm that the landlord has commenced an action in the Court against another party in relation to this residential property for the same period as noted in this Application. The action is against the applicant in the Application noted above. In the Notice of Civil Claim the landlord seeks the following relief:

- A writ of possession with respect to the Lands and Premises;
- An injunction restraining the applicant (on the other noted RTB application) and their agents, servants or otherwise from trespassing upon the Lands and Premises;
- General damages;
- A determination and award of occupation rent;
- Aggravated damages;
- Punitive damages;
- Special damages;
- Interest pursuant to the *Court Order Interest Act* R.S.B.C 1996, C. 79;
- Special costs, or alternatively costs; and
- Such further relief as the Court deems just.

Legal counsel for the landlord submitted that while the facts are similar for this Application and the Court action the basis for each claim is distinguishable. They submit that this proceeding is based on the assertion made by the applicant in the other noted Application that a tenancy exists and the landlord's civil action is based on the

landlord's assertion that a tenancy does not exist but that a tenancy exists between the landlord and the named tenant in this Application.

They further explain that the remedy sought in Supreme Court is based on damages for trespass including a claim for an award of occupation rent against the applicant in the other noted Application.

Section 58(2) of the *Residential Tenancy Act (Act)* states if the director accepts an Application for Dispute Resolution the director must resolve the dispute unless the dispute is linked substantially to a matter that is before the Supreme Court.

Residential Tenancy Policy Guideline #27 states the power and authority of the Residential Tenancy Branch (the Branch) is derived from the Legislation. The dispute resolution process does not create a court and so the Branch does not have inherent powers arising under the common law which are possessed by a judge. For example, the Branch does not have jurisdiction in "equity" to grant some forms of relief that a court may grant.

The Supreme Court, may, by order, assume jurisdiction over a residential tenancy matter, in which case the Branch loses jurisdiction over that dispute. If the dispute is linked substantially to a Supreme Court action then the Branch may decline jurisdiction.

Based on the submissions of the landlord's legal counsel, I find that at the heart of the landlord's claim in the Court is that a tenancy does not exist between the applicant from the other noted Application and landlord and that the landlord had a tenancy agreement with the tenant named as respondent in this Application..

I note, however, that part of the claim against the applicant from the other noted file is compensation in the form of occupation rent for the same period that the landlord seeks compensation for lost revenue and/or unpaid rent from the tenant named in the landlord's Application.

I find that it is not sufficient that the basis for each claim is distinguishable to determine that these matters are not linked to the civil action. Rather, I find that if the landlord is successful in obtaining an order from Supreme Court awarding an order of possession and compensation for occupation rent for the same period of time as the landlord's claim in this Application the outcome of the landlord's claim may be impacted.

Therefore I find that the dispute between these two parties is substantially linked to the claim before the Supreme Court and I decline jurisdiction.

As I have declined to accept jurisdiction, I have not considered the respondent's request for an adjournment.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; for cause; and/or for breach of an agreement; to a monetary order for unpaid rent; for damage to the residential property and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 44, 46, 47, 55, 67, and 72 of the *Act*.

Conclusion

Based on the above, I dismiss this Application for Dispute Resolution in its entirety, with leave to reapply pending the outcome of the current action before the Supreme Court of British Columbia.

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: October 05, 2016

Residential Tenancy Branch