



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HPD PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed February 5, 2019, wherein the Tenant requested return of their security deposit and recovery of the filing fee.

The hearing of the Tenant's Application was conducted by teleconference at 1:30 p.m. on May 28, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. In attendance for the Tenant was a representative of the corporation, M.L., as well as the company's legal counsel, N.B. The Landlord, M.E.H. was also represented by legal counsel, N.M.

Preliminary Matter—Status of Third Party

A third representative, A.A, called in on behalf of a corporate entity that was named by the Tenant as Landlord on an amendment. During the hearing the parties confirmed that A.A. and the company he represented were not proper parties to this proceeding.

Preliminary Matter—Naming of the Corporate Landlord

Counsel for the named corporate Landlord confirmed the correct legal name of the corporation. Pursuant to section 64(3)(c) of the *Act*, I amend the Tenant's Application for Dispute Resolution to accurately name the corporate Landlord.

Preliminary Matter—Jurisdiction

At the outset of the hearing the parties confirmed they had attended a prior hearing at the Residential Tenancy Branch related to another tenancy between the Tenant and the Landlord. At that time, the presiding Arbitrator, Arbitrator Takayanagi, declined jurisdiction to hear the dispute on the basis of section 58 of the *Residential Tenancy Act* which provides as follows:

58(2) Except as provided in subsection (4), if the director accepts an application under subsection (1), the director must resolve the dispute under this Part unless

(a) the claim is for an amount that is more than the monetary limit for claims under the *Small Claims Act*,

(a.1) the claim is with respect to whether the tenant is eligible to end a fixed term tenancy under section 45.1 [*tenant's notice: family violence or long-term care*],

(b) the application was not made within the applicable period specified under this Act, or

(c) the dispute is linked substantially to a matter that is before the Supreme Court.

[emphasis added]

The Supreme Court matter referenced by Arbitrator Takayanagi relates to a Notice of Civil Claim filed by the Landlord on May 17, 2019. In that claim, the Landlord alleges an oral contract between the Tenant and the Landlord in relation to ten separate residential properties. The property which was the subject of the dispute before me is listed in paragraph 4(viii) on the Notice of Civil Claim. The nature of the Supreme Court Claim, as described in the pleadings, is that the Tenant breached the oral contract and failed to pay for use of the residential properties.

In evidence before me were copies of correspondence between the parties' legal counsel. In one such letter dated January 2, 2019, counsel for the Tenant requests return of the security deposits for all 10 properties.

The parties confirmed they have a total of seven separate hearings before the Residential Tenancy Branch, including the one before me, and the one before Arbitrator Takayanagi. The file numbers and dates of the hearings for those matters are included on the unpublished cover page of this my Decision.

Counsel for the Landlord submitted that at the hearing before Arbitrator Takayanagi, counsel agreed they would be bound by his Decision with respect to jurisdiction and would litigate all matters in the B.C. Supreme Court, or the Residential Tenancy Branch, as the case may be. At the hearing before me, Counsel for the Tenant stated that it

was her intention to deal with all tenancies separately before the Residential Tenancy Branch and argue that the B.C. Supreme Court lacked jurisdiction. She confirmed she had not yet filed a Response to the Civil Claim filed May 17, 2019 such that the question of jurisdiction had not yet been pled in the Supreme Court.

While the B.C. Supreme Court may accept jurisdiction, or decline jurisdiction, the evidence confirms that the tenancy which is the subject of the proceeding before me is substantially linked to a matter which is currently before the B.C. Supreme Court. The Notice of Civil Claim references the rental unit as being one of ten separate units governed by an overarching oral agreement between the Landlord and the Tenant for use and occupation. On this basis, and pursuant to section 58, I decline jurisdiction to hear this matter.

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: May 30, 2019

Residential Tenancy Branch