



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNSD, FFT, MNSDS-DR, MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with cross applications pursuant to the *Residential Tenancy Act* ("Act"), the landlord applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

The tenants applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard. The parties acknowledged receipt of evidence submitted by the other.

Preliminary Issue - Jurisdiction

At the outset of the hearing, the issue of Jurisdiction was raised. The tenant filed two applications, one seeking a monetary amount of \$2900.00 and the other application seeking a monetary amount of \$63,454.62; the landlord has filed a cross application

seeking a monetary order for \$34,625.00. Counsel for the tenant submitted that much of the \$63,454.62 amount sought was overpayment of rent by the tenant and should not be considered in the calculation and that the matter could be heard by an Arbitrator at the Branch keeping it below the \$35,000.00 limit or, alternatively the tenant could abandon a portion of the application to make it fit under the limit. The landlord submits that the tenant has filed an application in the Supreme Court and that along with all of the applications should be heard there as the matter is detailed and the final tally will be well above the limit that the Branch can address.

Analysis

At the outset of the hearing both parties confirmed that the tenant has filed a Notice of Civil Claim in the Supreme Court on August 19, 2022 and is still pending and unresolved. Both parties further confirmed that the parties have three applications before the Branch and two more in the Provincial Court of British Columbia. The parties further confirmed that all of the matters are from the same set of facts and are as a result of this tenancy. Although the tenant wanted to proceed today for the sake of expediency, I must and have turned my mind to section 58 of the Act.

Section 58 of the Act addresses the issue before me as follows:

Section 58(2)(c) of the Act stipulates that I must resolve an Application for Dispute Resolution unless the dispute is linked substantially to a matter that is before the Supreme Court.

On the basis of the documentary submissions of the parties and the copy of Notice of Civil Claim, I find that this matter is substantially linked to a matter that is before the Supreme Court of British Columbia. I find that I do not currently have authority to adjudicate this matter.

Conclusion

As I do not currently have authority to adjudicate this matter, I decline to hear this matter for want 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: October 10, 2023

Residential Tenancy Branch