IT'S NOT JUST A NAME – NAMING A LANDLORD IN TENANCY DOCUMENTS

A recent B.C. Supreme Court decision[1] upheld a Residential Tenancy Branch ("RTB") decision requiring a property management company (acting as agent for a homeowner) to pay previous tenants $120,000 for not using a property, as outlined in a Two Month Notice to End Tenancy.

Background of the Tenancy and RTB Hearing

The property management company entered into a tenancy agreement directly with the tenants of a West Vancouver home. The tenancy agreement was signed by the tenants and a property manager as "Landlord's Agent". The property management company also listed itself as "Landlord" on the condition inspection report completed during a walkthrough of the home.

The homeowner wished to end the tenancy and instructed the property management company to serve a Two Month Notice to End Tenancy for Landlord's Use of Property on the tenants. The notice listed the property management company as the landlord.

After leaving the property, the tenants witnessed their former rental remaining vacant for several months. The tenants made an application to the RTB pursuant to section 51(2) seeking compensation equal to 12 months' worth of rent on the basis that the landlord failed to use the property as they indicated they would.

The RTB issued a decision in favour of the tenants as against the property management company. When the property management company sought a correction from the RTB to change the monetary order to name the homeowner instead of the property management company, the RTB denied the request. The RTB indicated that the contract between the homeowner and the property management company would likely clarify how the liability between the homeowner and property management company should be settled.

B.C. Supreme Court Decision

The property management company sought judicial review of the RTB decision via the B.C. Supreme Court. The property management company argued that the homeowner should be the listed respondent and it was patently unreasonable for a homeowner's agent to be on the hook for paying the tenants.

[1] 0808799 B.C. v. British Columbia (Residential Tenancy Branch), 2024 BCSC 1915 - The tenants' monetary award for emergency repairs made and return of security and/or pet damage deposit were also upheld.

It is worth noting that the tenants in this case never had direct access to, or communication with, the homeowners. The tenants were completely reliant on the property management company to execute the functions of a landlord.

It was found that the agent was clearly a "landlord" under the overarching and broad definition of "Landlord" set out in section 1 of the *Residential Tenancy Act*. The decision notes that adding a burden on tenants to "chase" owner-landlords would be "unjust, and inconsistent with the legislative scheme" to protect against unlawful evictions.

What Can a Property Management Company Do Differently?

A property management company can request an amendment to any pre-existing tenancy agreement to accurately reference a homeowner as the landlord of a property. Additionally, the company can review its management agreement and ensure a homeowner accepts responsibility for any costs/penalties while the property management company is acting as agent for the homeowner.

During the outset of any RTB hearing, a party can inform an arbitrator that there is an administrative matter to attend to. This is when a property manager can clarify their level of involvement with a property and request to change the name of a landlord, as listed on a tenant's notice of dispute. A property management company can also consider submitting their management agreement as evidence to show an arbitrator the limitations of a property manager's role and confirm a homeowner's responsibilities for any liabilities.

The case summarized above considered two specific remedies within the decision itself:

1. in the context of a landlord's use application, agent landlords can apply to have owners added as respondents to applications for dispute resolution in appropriate circumstances, and ensure the owners are served with dispute resolution materials; and

2. in the context of section 51(2) [landlord's failure to use property] matter, agent landlords may persuade an arbitrator under section 51(3) that extenuating circumstances warrant against granting a section 51(2) order against the agent.

Takeaway from Recent Case Law

The recent judgment noted above could impact property management companies' willingness to directly enter tenancy agreements or engage with tenants. While management companies often use a templated agreement, it will be interesting to see if there is a sudden influx of management companies revising their management agreements to ensure their risk is mitigated.

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