

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Tan v. British Columbia (Housing Management Commission)*,
2024 BCSC 842

Date: 20240516
Docket: S250153
Registry: New Westminster

Between:

Li Wen Tan

Plaintiff

And

British Columbia Housing Management Commission

Defendant

Before: The Honourable Justice Lamb

Reasons for Judgment

The Plaintiff appearing in person:

L. Tan

Counsel for the Defendant:

H. Kang,
Articled Student

Place and Date of Hearing:

New Westminster, B.C.
March 8, 2024

Place and Date of Judgment:

New Westminster, B.C.
May 16, 2024

Introduction

[1] The plaintiff, Li Wen Tan, has been a tenant in a building owned by the British Columbia Housing Management Commission (“BC Housing”) since at least December 1, 2012. On June 26, 2023, Mr. Tan filed a notice of civil claim (“NCC”) alleging BC Housing breached his right to quiet enjoyment pursuant to his tenancy agreement as a result of traffic noise, heat in his unit and other tenants’ smoking in their units. Mr. Tan also alleged that BC Housing’s employee entered his unit on June 19, 2023, contrary to Residential Tenancy Branch rules, and broke a curtain Mr. Tan had erected to reduce the heat in his unit. Mr. Tan seeks various remedies, including an award of damages against BC Housing and orders allowing him to keep his curtain and to withhold rent for periods when he did not have quiet enjoyment. Mr. Tan represents himself in this action.

[2] Mr. Tan filed a notice of dispute resolution proceeding with the Residential Tenancy Branch (the “RTB”) on June 15, 2023 seeking compensation in the amount of \$35,000 as a result of loud traffic noise and neighbours’ smoking in their suites. Mr. Tan filed a second notice of dispute resolution proceeding seeking to suspend or set conditions on the landlord’s right to enter the rental unit after the June 19, 2023 incident. The RTB has declined jurisdiction to hear these applications while this action is pending.

[3] In its response to civil claim, BC Housing denied all factual allegations in the NCC but admitted that Mr. Tan has been a tenant in a BC Housing building since December 2012. Under Part 3 Legal Basis of the response to civil claim, BC Housing identified that the *Residential Tenancy Act*, S.B.C. 2002, c. 78 generally requires landlord/tenant disputes to be adjudicated by the RTB and that claims exceeding the monetary limit prescribed by the *Small Claims Act*, R.S.B.C. 1996, c. 430 must be commenced by way of petition.

[4] After pleadings were closed, BC Housing filed an application to dismiss this action on three grounds:

- a) based on disputed jurisdiction, pursuant to Rule 21-8 of the *Supreme Court Civil Rules*;
- b) for disclosing no reasonable claim, pursuant to Rule 9-5(1)(a) of the *Supreme Court Civil Rules*; and
- c) on the basis that there is no genuine issue for trial, pursuant to Rule 9-6 of the *Supreme Court Civil Rules*.

At the hearing of the application, BC Housing abandoned its jurisdictional challenge.

[5] I heard this application in my role as case management judge for the more than twenty lawsuits filed by Mr. Tan against various defendants.

[6] In his oral submissions, Mr. Tan said the B.C. Supreme Court ought to adjudicate his claims because they exceed the *Small Claims Act* monetary limit. He says he intends to amend his NCC to plead trespass, defamation, negligence and harassment against BC Housing. Mr. Tan did not provide a proposed amended pleading.

[7] I am satisfied that the allegations of fact and claims advanced in the NCC fundamentally arise from the landlord-tenant relationship between Mr. Tan and BC Housing. Such claims would generally be adjudicated by the RTB; however, given Mr. Tan's assertion that damages will exceed \$35,000, the B.C. Supreme Court has jurisdiction to hear and decide the claims or to direct the claims be adjudicated by the RTB.

[8] As for the merits of the applications before the court, for the reasons that follow, BC Housing's application to strike the NCC and its summary judgment application are dismissed.

Legislative framework for landlord/tenant disputes

[9] Given the nature of the claims advanced by Mr. Tan and the relationship between the parties, it is important to consider the legislative context that is established by the *Residential Tenancy Act*.

[10] As our Court of Appeal noted, “[t]he purpose of the [*Residential Tenancy Act*] is to regulate residential tenancies and to create an administrative body with responsibility for the resolution of disputes between landlords and tenants”: *Jestadt v. Performing Arts Lodge Vancouver*, 2013 BCCA 183 at para. 34.

[11] Section 7 of the *Residential Tenancy Act* permits a tenant to claim against a landlord who failed to comply with its legislated and contractual obligations to a tenant:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[12] Subject to restrictions in the *Residential Tenancy Act*, s. 58(1) of the *Residential Tenancy Act* allows a person to make an application to the director of the RTB for dispute resolution with their landlord or tenant in respect of any of the following:

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that
 - (i) are required or prohibited under this Act, or
 - (ii) relate to
 - (A) the tenant's use, occupation or maintenance of the rental unit, or
 - (B) the use of common areas or services or facilities.

[13] Section 67 of the *Residential Tenancy Act* authorizes the RTB director to determine the amount of compensation payable for loss or damage resulting from a landlord or tenant's failure to comply with the *Residential Tenancy Act*, its regulations or a tenancy agreement and to order a landlord or tenant to pay such compensation.

[14] Section 58(2)(a) of the *Residential Tenancy Act* provides that the RTB director must not resolve claims that exceed the *Small Claims Act* monetary jurisdiction, subject to s. 58(4). Section 58(4) of the *Residential Tenancy Act* authorizes the Supreme Court to hear and determine such disputes or to order the RTB director to hear and determine such disputes.

[15] Section 58(2)(d) of the *Residential Tenancy Act* provides that the RTB director must not resolve disputes substantially linked to a matter that is before the B.C. Supreme Court. The RTB declined jurisdiction to hear the two RTB applications filed by Mr. Tan against BC Housing pursuant to s. 58(2)(d).

[16] Our Court of Appeal in *Gates v. Sahota*, 2018 BCCA 375, considered s. 58(2) and (4) of the *Residential Tenancy Act* prior to amendments, and provided guidance in respect of jurisdictional issues, which remains applicable notwithstanding subsequent amendments to the *Residential Tenancy Act*.

[17] A petition must be filed to invoke the Supreme Court’s jurisdiction pursuant to s. 58(4): Rule 2-1(2)(b) of the *Supreme Court Civil Rules*; *Gates* at para. 42. An application pursuant to s. 58(4) may affect the RTB director, thus the RTB director must be served with the petition: Rule 16-1(3) of the *Supreme Court Civil Rules*; *Gates* at para. 43.

[18] The respondent or the RTB director may object where the Supreme Court’s jurisdiction has been invoked in reliance on s. 58(2)(a): *Gates* at para. 44. It is also open to a judge of this Court to raise that issue: *Gates* at para. 44.

[19] The nature of the *Residential Tenancy Act* dispute does not change when it is adjudicated by a Supreme Court judge by virtue of s. 58(4) rather than by the RTB director: *Residential Tenancy Act*, s. 58(4.1); *Gates* at para. 57.

[20] With this legislative context in mind, I will turn to the merits of BC Housing’s applications.

Does the NCC disclose a reasonable cause of action?

[21] BC Housing has failed to establish that the NCC discloses no reasonable cause of action.

[22] Rule 9-5(1)(a) of the *Supreme Court Civil Rules* allows the court to strike a notice of civil claim that discloses no reasonable claim. Evidence is not admissible on such an application: Rule 9-5(2). Instead, the court must assume that the pleaded facts are true when assessing whether the pleading discloses a reasonable claim.

[23] A pleading may be struck where it is “plain and obvious” that the claim discloses no reasonable cause of action, has no reasonable prospect of success or if it is certain to fail: *Lantzville Community Association v. District of Lantzville*, 2021 BCSC 2260 at para. 11.

[24] When deciding whether to strike a pleading, the court “should consider whether defective pleadings can be corrected by way of an amendment and whether it would be appropriate to give leave to do so”: *Willow v. Chong*, 2013 BCSC 1083 at para. 23.

[25] The first claim Mr. Tan advances against BC Housing is for breach of quiet enjoyment as a result of his living conditions. Assuming the pleaded facts are true, it is not plain and obvious that this first claim discloses no reasonable cause of action or that it is certain to fail. Mr. Tan claims BC Housing has breached his right to quiet enjoyment under the tenancy agreement by virtue of loud traffic noise, the excessive temperature in his suite and BC Housing’s failure to enforce the prohibition on smoking in public areas of the building. Mr. Tan alleges these same factors have caused him injury, including headache, fatigue and dizziness. Section 7 of the *Residential Tenancy Act* authorizes a tenant to claim compensation against a landlord for failure to comply with the *Act* or the terms of the tenancy agreement, which is the type of claim Mr. Tan is advancing. I note that s. 28 of the *Residential Tenancy Act* enshrines and defines a tenant’s right to quiet enjoyment. In short, I am not satisfied that this first claim is bound to fail.

[26] The NCC also advances a claim for losses arising from BC Housing's employee's entry into Mr. Tan's suite on June 19, 2023. It is not plain and obvious that the claim related to unauthorized entry discloses no reasonable cause of action or that it is certain to fail. Again, for the purposes of this application, I must assume the alleged facts pleaded in the NCC are true. Mr. Tan alleges that BC Housing failed to give notice of its intention to enter his suite before a BC Housing employee entered without Mr. Tan's permission on June 19, 2023. Mr. Tan claims that the failure to give notice amounts to a breach of his right to quiet enjoyment and that he is entitled to damages. I am not satisfied that this second claim is bound to fail.

[27] At the hearing of the application, BC Housing argued that the NCC ought to be struck on the basis that there is no reasonable prospect that Mr. Tan's claim for damages will exceed the *Small Claims Act* limit. Mr. Tan seeks an order for damages in the amount of \$5,000,000 for breach of his right to quiet enjoyment and damages in the amount of \$8,000,000 for mental and physical injuries. I accept that there is no reasonable prospect that Mr. Tan will be awarded the quantum of damages he seeks, and claiming a specific amount of general damages is contrary to Rule 3-7(14) of the *Supreme Court Civil Rules*. That said, I am not able to conclude on an application to strike pleadings -- where evidence is not admissible and the facts alleged in the NCC are assumed to be true -- that any damage award will not exceed \$35,000.

[28] In summary, BC Housing's application to strike the NCC on the basis it discloses no reasonable cause of action is dismissed.

Is there a genuine triable issue?

[29] I am not satisfied that it is plain and obvious that the action will not succeed.

[30] In *Skybridge Investments Ltd. v. Metro Motors Ltd.*, 2006 BCCA 500, the B.C. Court of Appeal outlined how the court should proceed on an application for summary judgment pursuant to Rule 9-6 (previously Rule 18(6)) of the *Supreme Court Civil Rules*:

[10] A judge hearing an application pursuant to Rule 18(6) must: examine the pleaded facts to determine which causes of action they may support; identify the essential elements required to be proved at trial in order to succeed on each cause of action; and determine if sufficient material facts have been pleaded to support each element of a given cause of action.

[11] If insufficient material facts have been pleaded to support every element of a cause of action, then beyond a doubt that cause of action is bound to fail and a defendant bringing an application pursuant to Rule 18(6) will have met the onus to negative the existence of a *bona fide* triable issue.

[12] If sufficient material facts have been pleaded to support every element of a cause of action, but one or more of those pleaded material facts are contested, then the judge ruling on a Rule 18(6) application is not to weigh the evidence to determine the issue of fact for the purpose of the application. The judge's function is limited to a determination as to whether a *bona fide* triable issue arises on the material before the court in the context of the applicable law. If a judge ruling on a Rule 18(6) application must assess and weigh the evidence to arrive at a summary judgment, the "plain and obvious" or "beyond a doubt" test has not been met.

[Emphasis in original.]

[31] In this case, when reviewing the NCC, I have not ignored the fact that Mr. Tan is a self-represented litigant. Mr. Tan has pleaded material facts that, if proven, are capable of establishing a breach of quiet enjoyment, and damage or loss that he has allegedly suffered as a result of the defendant's breach. While the NCC is not a model pleading, I am satisfied that BC Housing is able to discern the nature of the claim advanced and the basis on which Mr. Tan says he is entitled to the relief sought from BC Housing.

[32] BC Housing has filed an affidavit setting out its employee's account of dealings with Mr. Tan. However, on an application pursuant to Rule 9-6, I am not permitted to weigh evidence to assess whether Mr. Tan's claim is likely to succeed.

[33] In summary, I have found that the NCC sets out sufficient material facts to support the claim advanced and to establish a *bona fide* triable issue. As a result, BC Housing's summary judgment application is dismissed.

Other issues

[34] BC Housing correctly points out that this proceeding ought to have been initiated by way of petition rather than by way of notice of claim. However, this

proceeding cannot be dismissed on the basis it was started by the wrong originating procedure: Rule 22-7(3) of the *Supreme Court Civil Rules*. The court retains significant discretion regarding how to best rectify this situation: *The Redeemed Christian Church of God v. New Westminster (City)*, 2022 BCCA 224 at para. 74. BC Housing did not seek any orders that would rectify the defective originating process in the event its applications to strike the NCC or for summary judgment failed. Neither party made any submissions about whether the action should be converted to a petition. The appropriate remedy may turn on whether or not Mr. Tan amends his NCC as he suggested he intends to do. In the absence of an application to address the defect or fulsome submissions on how the defect should be corrected, I decline at this time to make any order on this issue.

[35] As noted at para. 43 of *Gates*, the RTB director is entitled to notice of this proceeding. I order Mr. Tan to serve the RTB director with the NCC within 90 days.

[36] Once the RTB director has formal notice of this proceeding, either BC Housing or the RTB director may choose to bring an application to challenge this court's jurisdiction pursuant to s. 58(2)(a). Further, BC Housing or the RTB director may seek an order pursuant to s. 58(4) directing the RTB director to hear and determine Mr. Tan's claims. Any of the RTB director, BC Housing or Mr. Tan may choose to seek a remedy from the court with respect to the defective initiating procedure for this claim.

Conclusion

[37] BC Housing's application is dismissed. Mr. Tan is entitled to costs of this application in the cause.

"Lamb J."