

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Tan v. British Columbia (Housing Management Commission)*,
2025 BCSC 49

Date: 20250113
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 BC Housing Management Commission: H. Kang

Attendee for Director of the Residential Tenancy Branch: J. Patrick

Place and Date of Hearing: New Westminster, B.C.
October 1, 2024

Place and Date of Judgment: New Westminster, B.C.
January 13, 2025

[1] There are two applications before the court. The first seeks to remit the plaintiff's claims governed by the *Residential Tenancy Act*, S.B.C. 2002, c. 78 to the Residential Tenancy Branch ("RTB"), pursuant to s. 58(4) of the *Residential Tenancy Act*. The second is the plaintiff's application for substantive relief.

[2] By way of brief background, 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 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. In addition, Mr. Tan alleged BC Housing's employee entered his unit on June 19, 2023, contrary to RTB rules.

[3] Mr. Tan filed an amended notice of civil claim of August 6, 2024. He alleged another unauthorized entry by BC Housing's employee on December 14, 2023. He pleads that his tenancy agreement is void on the basis of misrepresentation and duress. He added an allegation that the defendant defamed him by making certain statements to Fraser Health. Mr. Tan seeks various remedies, including an award of damages against BC Housing, injunctive relief and an order refunding rent for periods when he did not have quiet enjoyment. In his amended notice of civil claim, Mr. Tan added claims for damages in trespass, defamation, negligence, harassment, and breach of fiduciary duty. He also added claims for aggravated and punitive damages and *Charter* damages. Mr. Tan represents himself in this action.

[4] Before filing this action, Mr. Tan had filed a notice of dispute resolution proceeding with the RTB on June 15, 2023 seeking compensation in the amount of \$35,000 for 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. On January 5, 2024, Mr. Tan filed a notice of dispute resolution proceeding taking issue with BC Housing's 10-day notice to end tenancy for unpaid rent. The RTB has declined jurisdiction to hear these three proceedings while this action is pending.

[5] In this proceeding, BC Housing previously applied to strike the notice of civil claim and for summary judgment. I heard that application in my role as case management judge for the more than twenty lawsuits filed by Mr. Tan against various defendants. In dismissing BC Housing's applications, I ordered that Mr. Tan serve the notice of civil claim in this action on the Director of the RTB, and I gave leave for BC Housing or the RTB Director to seek an order that the court direct the RTB to hear and determine Mr. Tan's claims. The defendant brings this application for such a direction, which is opposed by Mr. Tan. The RTB Director appeared on this application but took no position on whether such a direction should be granted. The RTB Director assisted the court by outlining the legal framework and some issues to consider with respect to the claims advanced by Mr. Tan.

[6] The other application before me at this time is Mr. Tan's application for orders that BC Housing move him to another rental suite or add remedial measures to reduce the temperature in his suite. He also seeks an order for a refund of rent. The authority relied upon by Mr. Tan for these substantive orders is the *Residential Tenancy Act*.

[7] I will address the defendant's application first.

Should Mr. Tan's claims be remitted to the RTB?

[8] Based on the relevant sections of the *Residential Tenancy Act*, the issue of whether Mr. Tan's claims should be remitted to the RTB turns on the following:

- i) do Mr. Tan's claims fall within the RTB's subject matter jurisdiction?
- ii) if so, does the B.C. Supreme Court have jurisdiction because the claims fall within an exception in s. 58(2) of the *Residential Tenancy Act*? and
- iii) if so, which is the better venue in the circumstances?

[9] For the reasons that follow, I am satisfied that most of the claims in the amended notice of civil claim fall within the jurisdiction of the RTB and should be remitted to the RTB for adjudication. The only exception is Mr. Tan's defamation

claim against the defendant, which can be severed from the remaining claims in the amended notice of civil claim.

[10] I will consider first whether the claims in the notice of civil claim fall within the subject matter jurisdiction of the RTB.

The essential character of most of the plaintiff's claims is a landlord/tenant dispute

[11] Most of the plaintiff's claims are grounded in the parties' landlord/tenant relationship and fall within the jurisdiction of the RTB. The only clear exception is the claim of defamation arising from the material facts pleaded in para. 37 of Part 1 of the amended notice of civil claim. The plaintiff's defamation claim arises from a discreet incident and is, in my view, severable from the claims that arise from the landlord/tenant relationship.

[12] As noted by the Court of Appeal in *Gates v. Sahota*, 2018 BCCA 375, leave to appeal to SCC ref'd, 38438 (2 May 2019):

[1] In British Columbia, residential-tenancy relationships are governed by the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [*Residential Tenancy Act*]. That statute generally requires landlord/tenant disputes to be adjudicated by the Director of the Residential Tenancy Branch ("RTB"). In practice, such disputes are dealt with by arbitrators within the RTB to whom the Director has delegated her authority.

[13] Landlord/tenant disputes that fall within the RTB's jurisdiction include those arising from rights, obligations and prohibitions under the *Residential Tenancy Act* and those arising from the rights and obligations under the terms of a tenancy agreement that relate to the tenant's use and occupation of the rental unit: *Residential Tenancy Act*, s. 58(1).

[14] Section 58(2) of the *Residential Tenancy Act* sets out exceptions to the RTB's exclusive jurisdiction. As the Court of Appeal recently noted in *Choi v. Westbank Projects Corp.*, 2024 BCCA 410:

[10] In *Gates v. Sahota*, 2018 BCCA 375, leave to appeal to SCC ref'd, 38438 (2 May 2019) [*Gates*], this Court recognized that the [*Residential Tenancy Act*] gives the Director exclusive jurisdiction over [*Residential Tenancy Act*] disputes, subject to exceptions enumerated within the

[*Residential Tenancy Act*] (at para. 71). When *Gates* was decided, there were two exceptions. There are now three:

1. When the claim is for an amount that is more than the monetary limit for claims under the *Small Claims Act*, R.S.B.C. 1996, c. 430 (s. 58(2)(a));
2. When the amount claimed under certain enumerated provisions exceeds \$65,000 (s. 58(2)(a.1)); and
3. When the dispute is linked substantially to a matter that is before the Supreme Court (s. 58(2)(d)).

[15] The RTB does not have exclusive jurisdiction over a claim by a tenant against a landlord where the legal basis for the claim is not the *Residential Tenancy Act* or the tenancy agreement: *Janus v. The Central Park Citizen Society*, 2019 BCCA 173 para. 29–30; *Choi* at para. 13. In *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, 1995 CanLII 108, the Supreme Court of Canada said that “it is the essential character of the claim, not the legal characterization, that determine jurisdiction where exclusive jurisdiction over some claims has been assigned to a statutory body”: *Choi* at para. 15; *Weber* at para. 52.

[16] The key question is whether the essential character of Mr. Tan’s claims against the defendant falls within the exclusive jurisdiction of the RTB, regardless of the label that is affixed to those claims: *Weber* at para. 49, 52, 67. I accept the Director’s submission that common law causes of action such as trespass or negligence that arise from the rights governed by the *Residential Tenancy Act* (e.g. the right of entry by the landlord) and rely on the same material facts as a claim under the *Residential Tenancy Act* fall within the Director’s jurisdiction. This approach recognizes the legislature’s intention to have disputes based upon rights and obligations arising from a tenancy agreement or the *Residential Tenancy Act* decided by the RTB (subject to the exceptions identified in s. 58(2)).

[17] The essential character of most of the claims pleaded in the amended notice of civil claim is a landlord/tenant issue that falls within the scope of disputes described in s. 58(1) of the *Residential Tenancy Act*, which means the claims fall within the exclusive jurisdiction of the RTB (subject to s. 58(2)). As drafted, most of the relief sought in the amended notice of civil claim arises from rights and

obligations under the *Residential Tenancy Act* or the tenancy agreement. More specifically, the only material facts pleaded in support of the relief claimed in the following paragraphs of Part 2 of the amended notice of civil claim arise from the plaintiff's rights as tenant and the defendant's obligations as landlord: paras. 1–5, 8, 15–23, 25–28. Subject to s. 58(2) of the *Residential Tenancy Act*, these claims fall within the exclusive jurisdiction of the RTB.

[18] The claim for damages for negligence at para. 10 of Part 2 of the amended notice of civil claim is a claim that arises from the landlord/tenant relationship. The material facts alleged in support of the negligence claim arise from the landlord/tenant relationship and not a duty of care that is alleged to be independent of the landlord/tenant relationship. The true nature of the plaintiff's claim for negligence is a claim for breach of the plaintiff's right to quiet enjoyment, a right that arises from the tenancy agreement and the *Residential Tenancy Act*.

[19] The plea of breach of fiduciary duty at para. 10 of Part 2 of the amended notice of civil claim is struck for disclosing no reasonable claim. In particular, there are insufficient material facts pleaded to support a claim for breach of fiduciary duty, and no basis upon which to allege a fiduciary relationship between the parties. I appreciate that the defendant did not apply to strike any part of the amended notice of civil claim pursuant to Rule 9-5(1); however, it is necessary to identify the claims that are being remitted to the RTB, and I am not inclined to remit any claims that have no hope of success because there are no material facts alleged to prove the claim.

[20] The claim for damages for "harassment" at para. 11 of Part 2 of the amended notice of civil claim does not clearly arise from the plaintiff's rights as tenant and the defendant's obligations as landlord. However, there is no common law tort of harassment in either British Columbia or Canada: *Stein v. Waddell*, 2020 BCSC 253 at paras. 30-35; *Gaucher v. British Columbia Institute of Technology*, 2021 BCSC 289 at para. 86; *Merrifield v. Canada (Attorney General)*, 2019 ONCA 205, leave to appeal to the SCC ref'd, 38630 (19 September 2019). The claim for

damages for “threats, causing fear to vulnerable people” is analogous to a claim for “harassment”. Accordingly, I conclude the plaintiff’s claim for damages for harassment (at para. 11 of Part 2 of the amended notice of civil claim) and his claim for damages for “threats” (at para. 35 of Part 2 of the amended notice of civil claim) are bound to fail and must be struck.

[21] The relief sought at paras. 7 and 24 of Part 2 of the amended notice of civil claim seeking settlement or mediation is not a proper prayer for relief and does not fall within the authority of the court to grant. The relief sought in paras. 7 and 24 of Part 2 of the amended notice of civil claim is bound to fail and must be struck.

[22] In short, other than the defamation claim, the viable claims pleaded in the amended notice of civil claim may be described as a landlord/tenant dispute that generally fall within the RTB’s jurisdiction.

The RTB is better able to adjudicate the landlord/tenant issues

[23] I am satisfied that the claims that fall within the RTB’s jurisdiction should be adjudicated by the RTB rather than in the B.C. Supreme Court, and I so order.

[24] When this action was filed, there were two circumstances where a landlord/tenant dispute could be adjudicated in B.C. Supreme Court:

- i) When the amount claimed exceeds the limit for *Small Claims Act*: s. 58(2)(a) of the *Residential Tenancy Act*; or
- ii) Where the landlord/tenant dispute is linked substantially to a matter before the Supreme Court: s. 58(2)(d) of the *Residential Tenancy Act*.

[25] Recently, s. 58(2) of the *Residential Tenancy Act* was amended to add s. 58(2)(a.1), which provides a limit of \$65,000 for certain claims. The parties’ submissions did not address whether the amendment to the *Residential Tenancy Act* applies to extant litigation. However, in this case, the outcome is the same, because Mr. Tan is seeking damages that exceed both monetary limits. For the balance of these reasons, I will refer only to s. 58(2)(a) in respect of the monetary

limit and leave for another day the question of whether s. 58(2)(a.1) applies to existing proceedings.

[26] Where the RTB must not resolve a landlord/tenant dispute by virtue of s. 58(2)(a) or (d) of the *Residential Tenancy Act*, s. 58(4) provides that the court may order the RTB Director to resolve the dispute or the court may hear and decide the dispute. If the B.C. Supreme Court assumes jurisdiction to adjudicate the dispute, s. 58(4.1) provides that the B.C. Supreme Court may make any order the RTB director may make under the *Residential Tenancy Act*. In other words, if the B.C. Supreme Court retains jurisdiction over a landlord/tenant dispute, then the B.C. Supreme Court judge stands in the place of the RTB Director and does not have any greater powers than the Director when adjudicating the landlord/tenant issues: *Gates* at para. 57.

[27] In this case, given the amount of damages claimed in the amended notice of civil claim exceeds \$35,000, the RTB Director may not resolve the dispute between Mr. Tan and BC Housing unless I order the RTB Director to do so: *Residential Tenancy Act*, s. 58(2)(a), 58(4).

[28] On the other hand, s. 58(2)(d) of the *Residential Tenancy Act* does not apply in this case. In particular, there is no “matter that is before the Supreme Court” to which the landlord/tenant disputes could be linked substantially because there is no separate action raising non-landlord/tenant issues. The Court of Appeal in *Gates* clearly stated that when a party seeks to oust the RTB Director’s exclusive jurisdiction over landlord/tenant disputes pursuant to s. 58(2)(d), there must be an existing B.C. Supreme Court matter to which the landlord/tenant dispute is substantially linked: *Gates* at para. 45. The proper procedure in these circumstances requires a party to file a notice of civil claim for non-*Residential Tenancy Act* claims, a petition for *Residential Tenancy Act* claims, and then an application pursuant to Rule 22-5(8) to consolidate or have the proceedings heard at the same time because the matters are linked substantially: *Gates* at paras. 45–46. However, even if Mr. Tan had started an action in respect of his non-*Residential Tenancy Act* claims

(i.e., his defamation claim) and then filed a petition for his *Residential Tenancy Act* claims, I would have not found the matters were linked substantially. As noted earlier, Mr. Tan’s defamation claim is severable from his other claims. In short, s. 58(2)(d) does not apply and would not apply even if Mr. Tan had followed the correct procedure.

[29] Having found that Mr. Tan’s claims fall within s. 58(2)(a) of the *Residential Tenancy Act*, I must decide whether to exercise my discretion to direct the RTB Director to resolve the dispute: s. 58(4). This requires me to decide which venue is more appropriate for determining the issues: *Price v. Kehal*, 2021 BCSC 2118 at para. 34. As noted in *Price*, the rules of procedure at the RTB are different. Some claims would benefit from the structures and processes available through the courts that are not available through the RTB: *Price* at para. 36. That said, “it is equally true that the discretion conferred in s. 58(4) imports a recognition that not all cases exceeding the monetary limit will necessarily benefit in that way and, in fact, may better be dealt with by way of RTB processes”: *Kassam v. Castro*, 2024 BCSC 921 at para. 27

[30] Mr. Tan’s claims fall squarely within the RTB’s expertise. Mr. Tan alleges breaches of quiet enjoyment, which he says have adversely affected his health. Issues of quiet enjoyment and other rights under the tenancy agreement and the *Residential Tenancy Act* fall within the RTB’s jurisdiction: *Residential Tenancy Act*, s. 58(1). The RTB has the authority to award compensation for loss or damage and Policy Guidelines that give guidance when awarding such compensation: *Residential Tenancy Act*, s. 67; Residential Tenancy Policy Guidelines 6 and 16.

[31] Although Mr. Tan claims damages that exceed the *Small Claims Act* limit, it is not clear whether, even if successful, Mr. Tan would be entitled to an award that would exceed or significantly exceed the *Small Claims Act* limit: see *Kassam* at para. 30.

[32] It is not clear that the more limited discovery rules in an RTB proceeding would prejudice or benefit one party or the other. Neither party raised any credibility issues that would likely be resolved more effectively in a court proceeding.

[33] The absence of evidentiary rules at the RTB may benefit Mr. Tan more than BC Housing in this case. For example, Mr. Tan has provided a medical note from his psychologist in support of his claim. This note does not comply with Rule 11-6 of the *Supreme Court Civil Rules* and would not be admissible in court, but the note may be accepted by the RTB. As a litigant of limited financial means, Mr. Tan would likely face difficulties in procuring expert evidence to support his claim of injury that would be admissible pursuant to the *Supreme Court Civil Rules*. In short, Mr. Tan may have more opportunity to lead evidence supportive of his claim of injury in an RTB proceeding.

[34] Keeping the *Residential Tenancy Act* claims in B.C. Supreme Court would not permit the court to award damages or relief not available for those claims if the matter was adjudicated by the RTB. If the B.C. Supreme Court retains jurisdiction over a landlord/tenant dispute, then the B.C. Supreme Court judge stands in the place of the RTB director and does not have any greater powers than the Director when adjudicating the landlord/tenant issues: *Gates* at para. 57. Whether or not the landlord/tenant dispute is adjudicated by the RTB Director or by a B.C. Supreme Court judge, punitive damages cannot be ordered in respect of claims arising from the landlord/tenant relationship: *Gates* at paras. 55 and 60. By the same logic, Mr. Tan would not be entitled to legal costs or damages pursuant to the *Charter of Human Rights and Freedoms* as claimed at paras. 6, 31, 34 of Part 2 of the amended notice of civil claim even if the claims were adjudicated in the B.C. Supreme Court.

[35] On balance, given the essential character of Mr. Tan's claims fall so squarely within the RTB's expertise and the value of the claim will not necessarily exceed the Small Claims limit, I am satisfied that the RTB is better-positioned to resolve the landlord/tenant dispute between Mr. Tan and BC Housing.

Which claims should the RTB resolve?

[36] The RTB has asked for clear direction regarding the claims it is directed to resolve. I order the RTB to resolve the claims made at paras. 1–5, 8, 15–23, 25–28 and the claim in negligence made at para. 10 of Part 2 of the amended notice of civil claim.

[37] The RTB should resolve Mr. Tan’s claims for special damages and aggravated damages (at para. 12 and 13 of Part 2 of the amended notice of civil claim), both of which are forms of compensatory damages. As noted, punitive damages and *Charter* damages do not fall within the jurisdiction of the RTB and such damages do not apply to disputes that fall within the RTB’s jurisdiction.

[38] Given my finding that the RTB is better suited to decide the landlord/tenant issues, I am dismissing Mr. Tan’s application for orders that BC Housing move him to a quieter suite, that BC Housing refund rent paid from August 2010 until he is moved, and that BC Housing tape an aluminum foil reflective sheet to the outside of his window. Mr. Tan may seek these remedies before the RTB as part of the RTB proceeding.

[39] To be clear, Mr. Tan may pursue his claim for defamation as pled in the amended notice of civil claim in B.C. Supreme Court. If Mr. Tan intends to pursue his claim for defamation, then he is directed to file a further amended notice of civil claim that includes only his claim for defamation and removes any allegations of fact and any claims unrelated to the claim for defamation. In particular, the claims remitted to the RTB should be removed from the further amended notice of civil claim.

[40] Each party shall bear their own costs of this application.

“Lamb J.”