



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a Notice to end tenancy issued for cause and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Is this matter significantly linked to a matter that is currently before BC Supreme Court?

### Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: the 1 Month Notice to end tenancy; letters written by other tenants; a letter from the rental unit mortgagee's lawyer advising of foreclosure proceedings; a Supreme Court petition involving the landlord and tenants.

The Landlord submitted documentary evidence which included, among other things, copies of: warning letters issued to the Tenant; and complaint letters written by other tenants.

The parties attended and confirmed that the occupation of this property is currently before the Supreme Court because the mortgage company is foreclosing on the

property. The Landlord stated that he does not know when or if the matter has been decided in Supreme Court and will seek that information.

### Analysis

Section 58 of the *Residential Tenancy Act* stipulates the following:

**58** (1) Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's 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.

(2) Except as provided in subsection (4), if the director receives an application under subsection (1), the director must determine the dispute unless

- (a) the claim is for an amount that is more than the monetary limit for claims under the *Small Claims Act*,
- (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 evidence supports that the mortgagee has filed a petition in Supreme Court which includes a request for an order for vacant possession of the lands.

Based on the foregoing, in the absence of evidence to prove that the matters have been decided in Supreme Court, I declined to hear these matters as they are significantly linked to a matter that is currently before the Supreme Court.

Accordingly, I find the Notice to end tenancy issued April 17, 2013, to have no merit at this time and informed the parties that if the Supreme Court refuses the request for vacant possession the Landlord would be required to serve another Notice to end tenancy if he wished to proceed with ending the tenancy.

Conclusion

I decline to hear this matter for want of jurisdiction. The application is hereby dismissed.

The 1 Month Notice to end tenancy issued April 17, 2013, is hereby set aside.

The Tenant has been successful with his application. Therefore, he may reduce his next rent payment by \$50.00 as full recovery of his filing fee.

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 24, 2013

---

Residential Tenancy Branch

