



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF, O

Introduction

This hearing was convened by way of conference call in response to the application for an Order of Possession for cause; other issues; and to recover the filing fee from the respondent for the cost of this application.

Prior to the hearing I reviewed the documentary evidence provided by the applicant. At the outset of the hearing I asked the applicant if the applicant had entered into a tenancy agreement with the respondent. The applicant responded and stated that the tenancy was between the co owner of the property and the respondent and that the matter was before the Supreme Court. The applicant agrees that there is not a tenancy between the applicant and the respondent.

Analysis

In the matter of jurisdiction the applicant has the burden of proof to show that a tenancy had been established between the applicant and the respondent. It is my decision that a tenancy has not been established and therefore I must decline jurisdiction in this matter.

I further find I must decline jurisdiction as the applicant has stated that the matter is before the Supreme Court. I refer the parties to s. 58 of the *Act* and in particular section 58 (2)(c) of the *Act* which states:

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.*

(3) Except as provided in subsection (4), a court does not have and must not exercise any jurisdiction in respect of a matter that must be submitted for determination by the director under this Act.

Section 58(4) of the Act states

(4) The Supreme Court may

*(a) on application, hear a dispute referred to in subsection (2)
(a) or (c), and*

*(b) on hearing the dispute, make any order that the director
may make under this Act.*

Conclusion

Consequently I decline to hear this application today as the applicant has stated that the matter is before the Supreme Court and has stated that no tenancy between the parties has been established. The application is therefore dismissed as I have declined jurisdiction in this matter.

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: June 19, 2013

Residential Tenancy Branch

