



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **INTERIM DECISION**

Dispute Codes      OLC, LRE, LAT

### Introduction

In his application, the tenant applied for an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, an order suspending or setting conditions on the landlord's right to enter the rental unit, and an order authorizing the tenant to change the locks to the rental unit. The tenant's application is scheduled to be heard at 9:30 a.m. on December 22, 2015.

This matter proceeded by way of an *ex parte* Proceeding, pursuant to section 76(1)(a) of the *Act* and Rules 7.1 and 7.2 of the *Rules of Procedure*. As the tenant's application was filed on October 14, 2015, prior to the new *Rules of Procedure* taking effect on October 26, 2015, the previous *Rules of Procedure* still apply to this matter.

On December 2, 2015, the Residential Tenancy Branch ("RTB") received a request, dated November 30, 2015, from the tenant. The tenant requested that the building manager for this rental property be summoned to provide testimony and produce a surveillance video recording. The tenant provided the name, address and telephone number of the witness, as well as a description summarizing the evidence to be expected from the witness and the purpose for which the evidence was required. The tenant stated that this surveillance video proves that the landlord illegally entered his rental unit without notice or permission. The tenant confirmed that the video is material to his application.

The tenant indicated that an attempt was made to obtain the surveillance video recording at the Supreme Court of British Columbia ("SCBC") on November 20, 2015, but the matter was adjourned to December 16, 2015. The tenant stated that he was applying for a summons at the RTB out of an "abundance of caution" in the event that the court denies his request.

Issues to be Decided

Should the witness be summoned to testify?

Should the tenant's application be heard at the SCBC or the RTB?

Analysis

The tenant resides in a rental unit that is owned by his sister, the landlord. The rental unit was purchased using funds from a trust that was created for the benefit of the tenant, by way of a will made by the tenant's mother. The landlord is also the trustee who administers the tenant's trust.

Upon review of the entire file for this matter, both parties produced affidavits relating to a pending action in the SCBC. The SCBC action relates to the landlord's administration of the tenant's trust. In their SCBC affidavits and the written evidence submitted for the RTB hearing, the parties refer to the rental unit, whether rent was paid to the landlord for the rental unit, trust funds used to maintain the rental unit, and the illegal entry of the landlord into the tenant's rental unit. Further, the tenant has made the same application to recover the surveillance video recording at the SCBC, which is scheduled for December 16, 2015, prior to the RTB hearing on December 22, 2015.

Section 58 of the *Act* states the following, in part:

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

*(c) the dispute is linked substantially to a matter that is before the Supreme Court.*

*(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.*

For the above reasons, I find that the tenant's application is linked substantially to a matter that is currently before the SCBC, as per section 58(2)(c) of the *Act*.

Conclusion

The tenant's request that the witness be summoned to testify and produce a video recording, is denied.

I decline to exercise jurisdiction over the tenant's application. The tenant's hearing at the RTB, scheduled for 9:30 a.m. on December 22, 2015, is hereby cancelled.

As per section 58(4)(a) of the *Act*, if the tenant intends to pursue his application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, an order suspending or setting conditions on the landlord's right to enter the rental unit, and an order authorizing the tenant to change the locks to the rental unit, he can file his application at the SCBC.

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: December 04, 2015

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Residential Tenancy Branch

