



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNR, O, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated December 18, 2015 ("10 Day Notice"), pursuant to section 46;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, undated ("2 Month Notice"), pursuant to section 49;
- other unspecified remedies; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Landlord PM and articling student NR (collectively "landlord PM"), landlord BS and advocate PB (collectively "landlord BS"), the tenant and advocate SB (collectively "tenant") attended the hearing. Landlord PM and landlord BS are collectively referred to as "both landlords" in this decision. All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The three parties named in this application confirmed that their advocates had authority to speak on their behalf at this hearing. This hearing lasted approximately 23 minutes in order to allow all parties to fully present their submissions at this hearing.

The two landlords confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that both landlords were duly served with the tenant's Application.

Landlord BS and the tenant confirmed that they did not receive landlord PM's written evidence package submitted for this hearing. I received a copy of landlord PM's written evidence on February 3, 2016. As this hearing did not proceed on its merits, I decline to make a finding regarding service of landlord PM's written evidence package.

Issue to be Decided

Should the tenant's Application be heard at the Supreme Court of British Columbia ("SCBC") or the Residential Tenancy Branch ("RTB")?

Background and Evidence

The tenant resides in a rental unit that was owned by her husband and according to the landlords, subsequently purchased by his sister. All parties agreed that the tenant has not paid rent for this rental unit and there is no written tenancy agreement.

The tenant produced SCBC pleadings relating to a pending family law action filed by the tenant on December 21, 2015. Both landlords confirmed receipt of the tenant's SCBC pleadings. In the SCBC pleadings, the tenant seeks, among other relief, an order regarding the "exclusive occupation of the family residence," using the address of the rental unit (Schedule 5 – Other Orders – Paragraph 14). Further, a certificate of pending litigation is registered on the title documents to this rental unit, as noted in landlord PM's documents. All parties confirmed that the family law matter is still before the SCBC and it has not yet been resolved.

I asked all parties to advise regarding their position as to whether this matter is substantially linked to an SCBC matter, as per section 58 of the *Act*. Landlord BS and the tenant agreed that this matter should be heard at the SCBC, as there is a substantial link. Landlord PM is the only party that objected to the matter being heard at the SCBC, citing that the interest in the sale proceeds of the rental unit and permission to occupy the rental unit were two different matters and that the RTB had jurisdiction to determine the occupancy issue. Landlord PM noted that she was suffering an economic loss by paying a mortgage while unable to occupy the rental unit.

Analysis

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.*

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*. It is clear from the orders sought by the tenant that she is seeking a determination from the SCBC regarding exclusive occupation of the rental unit. This is the same matter that the tenant has applied for in this Application, namely whether she can continue to occupy the rental unit after receiving two notices to end tenancy from the landlords.

Conclusion

I advised all parties during the hearing that I decline to exercise jurisdiction over the tenant's Application.

I further advised all parties that as per section 58(4)(a) of the *Act*, if the tenant intends to pursue her Application against both landlords, she can file it at the SCBC for a determination.

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: February 10, 2016

Residential Tenancy Branch

