



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPT, OPR, MNDC, SS, FF

There are two related applications. One is the tenant's application for an order setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent, an order of possession, and an order permitting service of documents in a manner different than that required by the legislation. The other is the landlord's application for an order of possession based upon the same 10 Day Notice to End Tenancy for Non-Payment of Rent and a monetary order. Both parties have been represented by counsel throughout.

This application has been ongoing for several months. The preliminary issue that had to be determined was whether there was an active appeal before the Court of Appeal.

On October 13, 2016 the Court of Appeal granted the tenant's application for an order extending the time for service of the Notice of Appeal. Copies of the Order and the Oral Reasons for Judgment were submitted by the tenant's counsel. The hearing of the appeal has been set for January 30, 2017.

The Residential Tenancy Branch has been created by statute, the *Residential Tenancy Act*, and can only hear and decide disputes that are within the jurisdiction created by the statute.

Section 58(2)(c) states that an arbitrator cannot hear and determine a dispute that is linked substantially to a matter before the Supreme Court. By logical extension this prohibition must include a Supreme Court matter that has been appealed to the Court of Appeal. Throughout these proceedings, both parties have agreed with this interpretation of the legislation.

As both disputes are substantially linked to a matter that is before the Court of Appeal the Residential Tenancy Branch does not have any jurisdiction over either of them.

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: November 03, 2016

Residential Tenancy Branch

