



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, OPR, FF

### Introduction

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

1. An Order of Possession for unpaid rent pursuant to section 55;
2. A monetary order for unpaid rent and losses from damage pursuant to section 67;
3. To recover the filing fee from the tenant for the cost of this application pursuant to section 72.

The landlord and the tenant attended the teleconference hearing.

### Preliminary Issue – Jurisdiction

Based on the evidence submitted prior to the hearing, a question arose in regards to whether I had jurisdiction regarding this application. Specifically, I needed to determine whether I had jurisdiction to hear this matter, or whether it was a matter substantially linked to a matter before the Supreme Court of British Columbia ("SCBC").

Regarding the issue of jurisdiction, the parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. I confirmed with both parties the evidence packages before me.

## Background and Evidence

The landlord is the registered owner of this house although there is currently a dispute as to who has an interest in this property. The house was originally owned by the mother, and subsequently transferred to include the landlord and the mother as a joint tenancy in 2011 with a right of survivorship, and then solely to the landlord on July 6, 2016 after the mother passed away on June 30, 2016. The dispute address pertains to the basement suite of this house which, according to the landlord, is currently being sublet with the payments being made directly to the tenant. There is no written tenancy agreement between the tenant and the landlord. On September 19, 2016 the landlord served the tenant with a 10 day Notice to End Tenancy for Unpaid Rent for failure to pay rent of \$1,200.00 due on August 1, 2016.

The tenant produced SCBC pleadings relating to a pending civil claim filed by the tenant on September 28, 2016. The landlord confirmed receipt of the tenant's SCBC pleadings. In the SCBC pleadings, the tenant seeks, among other relief, "a declaration that the Defendant holds the Property on a resulting trust for the estate" and "an order that the Defendant transfer the Property to the Estate of Patricia". Further, a certificate of pending litigation is registered on the title documents to this rental unit, as acknowledged by both parties. All parties confirmed that the civil claim 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*. The tenant agreed that this matter should be heard at the SCBC, as there is a substantial link. The landlord confirmed that the tenant is claiming an interest in the property, and that this decision is pending before the SCBC.

## 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.*

It is clear that the landlord's Application pertains to the same property that is before the SCBC, which involves both parties, and where a determination has yet to be made in regarding who has an interest in this property. As such, I find that the landlord's Application is linked substantially to a matter that is currently before the SCBC, as per section 58(2)(c) of the *Act*.

### Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

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 29, 2016

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Residential Tenancy Branch