



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, FF

Introduction

This is an application requesting a finding that, since the applicant has filed a Civil Claim with the Supreme Court of British Columbia, the Residential Tenancy Branch's ability to determine a dispute between the parties is suspended.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally.

All parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the Residential Tenancy Branch's ability to determine a dispute between these parties is suspended pending the outcome of a BC Supreme Court application.

Decision and Reasons

Pursuant to subsection 58(3) of the Act, the Residential Tenancy Branch has exclusive jurisdiction over disputes arising under the Act; however pursuant to paragraph 58(2)(c), if there is an application with the BC Supreme Court, this Branch's ability determined to dispute is suspended pending the outcome of that claim.

Section 58(2) states:

58(2) Except as provided in subsection (4), if the director accepts an application under subsection (1), the director must resolve the dispute under this Part unless (c) the dispute is linked substantially to a matter that is before the Supreme Court

This provision provides primacy to the Supreme Court's jurisdiction where jurisdiction overlaps, so long as that matter is substantially linked to the matter that is before the Supreme Court; however 58(4) of the Act states:

58(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 my finding that possession of this unit is substantially linked to the claim filed before the Supreme Court of British Columbia, and therefore, if the respondent wishes to pursue possession of this rental unit, he must do so through an application to the Supreme Court.

Conclusion

The Residential Tenancy Branch's ability to determine a dispute between these parties is suspended pending the outcome of a BC Supreme Court application.

The request for recovery of the \$100.00 filing fee is dismissed, because, at this point, no decision has been made by the Supreme Court as to whether or not this is a tenancy, and if it is not a tenancy I have no jurisdiction to issue any orders whatsoever.

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: March 01, 2017

Residential Tenancy Branch

