



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, O

### Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated January 30, 2017 ("2 Month Notice"), pursuant to section 42;
- other unspecified remedies.

The tenant and her lawyer and the landlord and his advocate attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that her lawyer had authority to speak on her behalf at this hearing. The landlord confirmed that his advocate had authority to speak on his behalf at this hearing. The landlord's advocate is the tenant's ex-common-law-partner and the former owner of the manufactured home that is the subject of this application. "Witness BR" appeared on behalf of the tenant but did not testify at this hearing. This hearing lasted approximately 32 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord'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

As per both parties' testimony, the tenant resides in a manufactured home that was formerly owned by her ex-common-law-partner and subsequently purchased by the landlord. The tenant's lawyer claimed that the tenant has a beneficial ownership interest in the manufactured home and that it is currently the subject of common law separation SCBC proceedings.

The tenant produced an SCBC interim order, dated November 30, 2012, relating to a pending family law action between the tenant and the landlord's advocate. The tenant also produced a document filed with the local Court Registry on July 30, 2014, indicating that the manufactured home is the subject of the family law proceedings. The tenant's lawyer confirmed that the SCBC matter is still ongoing, although nothing had occurred since the above date because the tenant could not afford a lawyer to represent her in the matter. He said that he was in the process of restarting SCBC proceedings now that he had been hired as the tenant's lawyer. He stated that the matter was not resolved, nor was a final order issued by the SCBC.

The landlord's advocate confirmed that he participated in SCBC family law proceedings with the tenant, including when the interim order was issued, but claimed that he thought the matter was concluded because he did not hear anything about it after November 2012. The landlord confirmed that he was aware that the manufactured home was the subject of a family law proceeding between the tenant and the landlord's advocate.

I asked all parties to provide submissions regarding their position as to whether this application is substantially linked to an SCBC matter, as per section 51 of the *Act*. The landlord and the tenant agreed that this matter should be heard at the SCBC, as there is a substantial link. The landlord's advocate, who is not a party to this RTB application, is the only person that objected to the matter being heard at the SCBC, stating that he could not afford a lawyer to deal with the matter at the SCBC.

## Analysis

Section 51 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 51(2)(c) of the *Act*. It is clear from both parties' submissions and the Court documents, that the tenant is seeking a determination from the SCBC as to whether she has a beneficial ownership interest in the manufactured home that is the subject of this application. The tenant's application at this RTB hearing seeks to determine whether the tenant can continue to occupy the manufactured home after receiving a notice to end tenancy from the landlord. As both named parties consented to the SCBC hearing this RTB application, and given that the landlord's advocate is not a party to this current application, I find that the SCBC is the appropriate venue to hear this application.

I advised all parties during the hearing that I decline to exercise jurisdiction over the tenant's application pursuant to section 51(2)(c) of the *Act*. I further notified all parties that as per section 51(4)(a) of the *Act*, if the tenant intends to pursue this application against the landlord and his advocate, she can file it at the SCBC for a determination.

### Conclusion

I decline to exercise jurisdiction over the tenant's application, pursuant to section 51(2)(c) of the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: March 03, 2017

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Residential Tenancy Branch

