



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, AAT, FF, LAT
FF, OPL

Introduction and Conclusion

This hearing convened as a result of cross applications. The Applicant, A.G., filed a Tenant's Application for Dispute Resolution on May 11, 2017 requesting an Order canceling a 2 Month Notice to End Tenancy for Landlord's Use issued on April 28, 2017 (the "Notice"), an Order allowing the Tenant or his guests access to the rental unit, authority to change the locks and recovery of the filing fee. The Respondent, A.N., filed a Landlord's Application for Dispute Resolution on May 21, 2017 seeking an Order of Possession based on the Notice and recovery of the filing fee.

The hearing was conducted by teleconference on June 22, 2017. Both parties and their legal counsel called into the hearing.

The Respondent, A.N., is the registered owner of the property.

The parties agree that A.G. claims an interest in the property and to this end, has filed a family law claim in the B.C. Supreme Court.

N.R., counsel for the Applicant, A.G., advised that the Applicant had commenced a family law proceeding in the B.C. Supreme Court by filing a Notice of Family Law Claim on March 7, 2017; a copy of the claim was provided in evidence. Also filed in evidence was a copy of the *Land (Spouse Protection) Act* Charge filed May 25, 2016 as well as a Land Title Search dated March 2, 2017 confirming the filing of this charge.

As this matter is substantially before the Supreme Court of B.C., I decline jurisdiction pursuant to section 58(2)(c) of the *Residential Tenancy Act*. For greater clarity I reproduce that section as follows:

Determining disputes

58 (1) Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that
 - (i) are required or prohibited under this Act, or
 - (ii) relate to
 - (A) the tenant's use, occupation or maintenance of the rental unit, or

(B) the use of common areas or services or facilities.

(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

(a) the claim is for an amount that is more than the monetary limit for claims under the *Small Claims Act*,

(a.1) the claim is with respect to whether the tenant is eligible to end a fixed term tenancy under section 45.1 [*tenant's notice: family violence or long-term care*],

(b) the application was not made within the applicable period specified under this Act, or

(c) the dispute is linked substantially to a matter that is before the Supreme Court.

(2.1) Subsection (2) (a.1) of this section does not apply if the basis of the claim is that a statement purporting to confirm a tenant's eligibility to end a fixed term tenancy for the purposes of section 45.1 (2) was made by a person who was not authorized to do so under the regulations.

(3) Except as provided in subsection (4), a court does not have and must not exercise any jurisdiction in respect of a matter that must be submitted to the director for dispute resolution under this Act.

(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.

(5) The *Arbitration Act* does not apply to a dispute resolution proceeding.

[Emphasis added in bold]

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: June 22, 2017

Residential Tenancy Branch