



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FF; CNR, OPT, O

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

This hearing also dealt with the respondent's application pursuant to the *Act* for:

- cancellation of a landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated May 8, 2017 ("10 Day Notice"), pursuant to section 46;
- an Order of Possession of the property, pursuant to section 54; and
- other unspecified remedies.

The applicant, the respondent, and the respondent's lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The respondent provided written documentation indicating that her lawyer had authority to speak on her behalf at this hearing. The applicant intended to call a witness but as this matter did not proceed on the merits of both applications, it was not necessary for the witness to testify. This hearing lasted approximately 29 minutes in order to allow both parties to fully present their submissions.

The respondent's lawyer confirmed receipt of the applicant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the respondent was duly served with the applicant's application.

The applicant confirmed receipt of the respondent's written evidence package on the day before this hearing. She claimed that she had received the respondent's Supreme Court of British Columbia ("SCBC") pleadings on June 9, 2017, well before the hearing date. The applicant confirmed that she also received the emails between herself and the respondent.

During the hearing, the respondent's lawyer confirmed that there is a "future hearing" scheduled for the respondent's application on August 17, 2017 at 9:00 a.m. The application was filed on June 21, 2017, shortly before this hearing. The respondent's lawyer claimed that the application was sent to the applicant but he could not recall the date of service. The applicant confirmed that she did not receive the respondent's application.

During the hearing, I notified the applicant about the claims made by the respondent in her application and confirmed with the respondent's lawyer that the same written evidence package that was served to the applicant to respond to her application, was the only evidence contained in the respondent's application. The future hearing deals with the same 10 Day Notice as in this hearing and requests an order of possession for the respondent for the same property. During the hearing, I notified both parties not to attend the future hearing because it is cancelled by way of this decision, for the below reasons.

Issue to be Decided

Should both parties' applications be heard at the SCBC or the Residential Tenancy Branch ("RTB")?

Background and Evidence

The respondent's lawyer confirmed that he filed pleadings on behalf of the respondent in the SCBC regarding this property, alleging that the applicant holds the property in a resulting trust for the respondent and that the applicant was required to retransfer title back to the respondent or her nominee. The respondent's lawyer stated that the pleadings were filed in the SCBC on June 5, 2017. The applicant confirmed receipt of the above pleadings on June 9, 2017, and stated that she had reviewed the pleadings and was aware of the above issues alleged in the pleadings. The respondent's lawyer claimed that the applicant had not yet responded to the pleadings.

I asked both parties to provide submissions regarding their position as to whether these RTB applications are substantially linked to an SCBC matter, as per section 58 of the *Act*. The respondent raised the matter in her written evidence package by providing the SCBC pleadings as evidence.

The respondent's lawyer stated that the matter should be heard at the SCBC, claiming that the issues in both applications are substantially linked to a matter currently before the SCBC. He explained that the issue of whether the respondent had an interest in the property because the applicant was holding it in trust for the respondent, was central to both the RTB and the SCBC matters. He maintained that there was no written or verbal tenancy agreement between the parties so this was not a tenancy in any event.

The applicant opposed the matter being heard at the SCBC. She stated that she wanted an immediate order of possession against the respondent in order to enter the property to assess any damages. She claimed that the parties had a verbal tenancy agreement so a tenancy was created.

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 from both parties' applications that the same parties and property are involved in both the RTB and SCBC applications. I find that one of the central issues is whether the parties have ownership interests in the same property, an issue that is raised by the respondent's SCBC pleadings. This will impact a determination as to whether a tenancy was created. Therefore, I find that both parties' RTB applications are linked substantially to a matter that is currently before the SCBC, as per section 58(2)(c) of the

Act. I find that the SCBC is the appropriate venue to hear this application to avoid duplication of proceedings and to increase efficiency in the process.

I advised both parties during the hearing that I decline to exercise jurisdiction over both parties' applications. I also notified them that as per section 58(4)(a) of the *Act*, if the parties intend to pursue their applications against each other, they can file it at the SCBC for a determination.

The respondent's lawyer inquired about costs and I informed him that as I had declined jurisdiction over both parties' applications, I could not deal with the issue of the filing fees, which are the only costs that are claimable under section 72 of the *Act*.

Conclusion

I decline to exercise jurisdiction over both parties' applications.

The respondent's application, scheduled for a future hearing on August 17, 2017 at 9:00 a.m., is cancelled by way of this decision and neither party is required to attend the future hearing.

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 28, 2017

Residential Tenancy Branch