



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL FF

This hearing dealt with the Landlord's Application for Dispute Resolution, dated June 7, 2017 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing at the appointed time and was accompanied by his legal counsel, M.D. The Tenant attended the hearing at the appointed time and was accompanied by his legal counsel, C.C.

At the outset of the hearing, my jurisdiction to hear this dispute was discussed. Section 58 of the *Act* states:

(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.

[Reproduced as written.]

The above provision confirms that upon accepting an application the director must resolve disputes under the *Act* or a tenancy agreement, *unless* the dispute is linked substantially to a matter that is before the Supreme Court. As acknowledged by M.D., the dispute is currently before the Supreme Court. However, M.D. submitted the director has exclusive jurisdiction to hear tenancy disputes. He suggested allowing parties to file a notice of civil claim would effectively oust the director's exclusive jurisdiction, which is not the true intent of the legislation.

On behalf of the Tenant, C.C. also confirmed that this matter is before the Supreme Court. Submitted with the Tenant's documentary evidence were copies of the Notice of Civil Claim and the Response to Civil Claim, filed on May 11 and June 1, 2017, respectively. The pleadings include claims related to the Tenant's alleged interest in and use of the property.

The *Act* empowers the director to determine disputes between a landlord and a tenant. In the matter before me, the Tenant claimed to have an interest in the property and has applied to the Supreme Court for relief. If that is the finding of the Supreme Court, then there would be no jurisdiction under the *Act*, as the Tenant would be an owner and therefore would be considered a landlord under the definitions to the *Act*. Furthermore, only the Supreme Court can make a finding as to the ownership of the property in a matter such as this.

Based on the submissions of counsel, I find this matter is linked substantially to a matter that is before the Supreme Court. Accordingly, I am unable to conclude that I have jurisdiction in this matter while the issue of the Tenant's interest in the property is before the Supreme Court. The Application is dismissed with leave to reapply depending on the outcome in the Supreme Court.

The parties and their legal counsel were advised of my decision during the hearing. M.D. advised of his client's intention to apply for judicial review of the decision and asked to be provided with my decision writing, which I have done.

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: August 8, 2017

Residential Tenancy Branch