



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OPR OPC FF MNDC MNR MND

Introduction

This hearing was originally scheduled to hear the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of a 1 Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act*.

Following opening remarks, the landlord, L.R. asked that her application which was to be heard on April 30, 2018 be joined with the hearing before me on April 4, 2018. This application was for:

- an Order of Possession for unpaid rent pursuant to section 46 of the *Act*;
- an Order of Possession for Cause pursuant to section 47 of the *Act*;
- a Monetary Award for money owed, or compensation for damage or loss pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Residential Tenancy Branch Rules of Procedure 2.10 states - Applications for Dispute Resolution may be joined and heard at the same hearing so that the dispute resolution process will be fair, efficient and consistent. In considering whether to join applications, the Residential Tenancy Branch will consider the following criteria:

- a) whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit;
- b) whether all applications name the same landlord;
- c) whether the remedies sought in each application are similar; or

- d) whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of fact or law in resolving each application.

After reviewing the landlord's application to be heard on April 30, 2018, I find that the matters which were to be considered at that hearing were substantially related to the tenant's application before me on April 10, 2018. I have therefore joined the applications and in addition to the tenant's application as described above, I will consider the landlord's application, as well as that of the tenant.

Both parties attended the hearing and confirmed receipt of each other's applications for dispute resolution and evidentiary packages. The tenant was represented at the hearing by his counsel, G.R., while the landlord appeared on her own behalf.

Preliminary Issue – British Columbia Supreme Court

Following opening remarks, counsel for the tenant explained that a dispute regarding an ownership interest in the property was presently before the British Columbia Supreme Court ("BCSC"). He said that his client was alleging that he had a common law ownership stake in the property and that therefore no rent should be due. Counsel informed that this matter had yet to be resolved by the Court and that a decision from the BCSC could ultimately void the rent which the landlord is alleging to be outstanding. Counsel stated that the matter was filed in the BCSC on March 21, 2018 and served to the landlord on approximately April 5 or 6, 2018. The landlord acknowledged receipt of this document but argued that no rent had been paid since October 2017, that a tenancy agreement was in place between the parties and that money remained outstanding related to this tenancy.

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 that the Application of the parties pertains to the same property that is before the BCSC. This application before the Court involves both parties, and is substantially linked to the potential ownership interest of the tenant with regard to the property in question. A determination has yet to be made regarding who has an interest in this property. As such, I find that the Applications of the parties are linked substantially to a matter that is currently before the BCSC, as per section 58(2)(c) of the *Act*.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

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: April 11, 2018

Residential Tenancy Branch