



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNR, FFT

### Introduction

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

- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46; and
- recovery of the filing fee for this application, pursuant to section 72.

### Preliminary Issue- Jurisdiction

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Legal counsel for both parties appeared at the hearing and provided submissions regarding the Residential Tenancy Branch's jurisdiction to hear this matter.

Counsel for the tenant argued that the Residential Tenancy Branch does not have jurisdiction to hear this matter as it is substantially linked to an action currently before the Supreme Court of British Columbia (S.C.B.C.), contrary to section 58(2)(c) of the *Act*.

Both parties agreed that the tenant filed a Notice of Civil Claim on October 16, 2017 claiming an ownership interest in the residential address which is the subject of today's hearing. Both parties agreed that the landlord filed a Response to Civil Claim and a Counterclaim on February 22, 2018. The court file number and registry were provided by counsel for the tenant.

Counsel for the landlord confirmed that the dispute before the S.C.B.C. concerned the residential property which is the subject of today's hearing. Counsel for the landlord submitted that the Residential Tenancy Branch does have jurisdiction to hear this matter as the S.C.B.C. case regards an ownership interest whereas what is being disputed in today's hearing is the right of possession of the residential property in question. Counsel for the landlord argued that

since the S.C.B.C. matter regards ownership and not possession, which is the subject of today's dispute, this dispute is not substantially linked to the matter before the S.C.B.C.

#### Analysis/Conclusion

Section 58(2)(c) of the Act provides that if the director receives an Application, the director must determine the dispute unless the dispute is linked substantially to a matter that is before the Supreme Court.

Policy Guideline 27 states that the Act does not have jurisdiction in a dispute where a party has an interest in a dispute property that goes beyond a landlord and tenant relationship.

I find that, in this case, the right of possession and the ownership interest are part of the same dispute and cannot be separated. I find that an attempt to separate these issues would usurp the authority of the S.C.B.C. which section 58(2)(c) of the Act clearly gives deference to.

As both parties agree that the right of ownership of the property in question is currently before the S.C.B.C., I find that this dispute is substantially linked to a matter that is before the S.C.B.C., contrary to section 58(2)(c) of the Act.

Since this matter is currently before the S.C.B.C., I find that it would be premature to make findings in this matter whether they pertain to a potential ownership issue or the right of possession. As a result, I hereby dismiss the tenant's Application with leave to re-apply and decline to make any legal findings in this matter until the S.C.B.C. matter has been determined. Liberty to reapply is not an extension of any applicable limitation period.

The parties were informed of this outcome in the 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: July 27, 2018

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Residential Tenancy Branch