



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, PSF

Introduction

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

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 25, 2018 ("10 Day Notice"), pursuant to section 46;
- an order requiring the landlords to provide services and facilities required by law, pursuant to section 65.

The two landlords, male landlord ("landlord") and "female landlord," the tenant and the tenant's agent attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that her agent had authority to speak on her behalf at this hearing. The landlord confirmed that he had authority to speak on the female landlord's behalf at this hearing (collectively "landlords"). The female landlord did not testify at this hearing. This hearing lasted approximately 18 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that both landlords were duly served with the tenant's application and the tenant was duly served with the landlords' written evidence package.

Issue to be Decided

Should the tenant's application be heard at the Supreme Court of British Columbia ("SCBC") or the Residential Tenancy Branch ("RTB")?

Background and Evidence

Both parties agreed during the hearing that the tenant resides in the basement of a house ("rental unit"), while the landlord occupies the upper floor of the same house (collectively "rental property"). The tenant claimed that her lawyer filed pleadings in the SCBC in May 2018 relating to the rental property being the subject of common law family proceedings.

I asked both parties to provide submissions regarding their position as to whether this application is substantially linked to an SCBC matter, as per section 58 of the *Act*. The tenant raised the matter by providing the SCBC pleadings as evidence.

The tenant agreed that this matter should be heard at the SCBC, as there is a substantial link. The tenant stated that the RTB did not have jurisdiction to hear her application, pursuant to section 58 of the *Act*, because a dispute over the rental unit is currently before the SCBC. She also claimed that she is not a tenant and the landlord is not her landlord because this is a family dispute.

The tenant confirmed that her lawyer filed SCBC pleadings on May 8, 2018, seeking relief and damages against the landlord with respect to this rental unit. The tenant provided a copy of these pleadings with her application. The landlord confirmed receipt of these documents from the tenant and indicated that he was aware the matter was currently before the SCBC.

The landlord objected to the matter being heard at the SCBC, stating that he tried to bring the matter before the Provincial Court of British Columbia ("PCBC") in May 2017 and the Judge told him to bring it before the RTB. He said that even though the family proceedings were currently before the SCBC, this was a separate tenancy issue. He claimed that he did not know how long the SCBC proceedings would take because nothing had happened in a long time despite the matter being brought in May 2018.

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 the tenant's application 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 interests in the same property, an issue that is raised by the tenant's SCBC pleadings. This will impact a determination about the tenancy. Although the landlord attempted to bring this matter before the PCBC in May 2017, this was one year before the matter was brought in the SCBC in May 2018.

Therefore, I find that the tenant's RTB application is 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 the tenant's application.

I further notified the tenant that as per section 58(4)(a) of the *Act*, if the tenant intends to pursue this application against the landlords, she can file it at the SCBC for a determination. I informed her that the matter was time-sensitive.

I encouraged both parties to speak to their lawyers immediately after the hearing, as both had questions requiring legal advice, which I could not answer for them.

Conclusion

I decline to exercise jurisdiction over the tenant's application.

I make no determination on the merits of the tenant's application.

Nothing in my decision prevents either party from advancing their claims before a Court of competent jurisdiction.

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: November 06, 2018

Residential Tenancy Branch