

## **DECISION**

Dispute Codes      CNR, MT (Tenant's Application)  
FFL, OPRM-DR (Landlord's Application)

### **Introduction**

This hearing convened as a result of cross applications.

In the Tenant's Application for Dispute Resolution, filed on December 13, 2018, the Tenant sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on December 2, 2018 (the "Notice") as well as more time to make such an application pursuant to section 66(1) of the *Residential Tenancy Act*.

In the Landlord's Application for Dispute Resolution, filed on December 17, 2018, the Landlord sought an Order of Possession and monetary compensation pursuant to the Notice, as well as recovery of the filing fee.

The hearing was scheduled for teleconference at 11:00 a.m. on January 25, 2019. The Tenant, and his legal counsel, S.P. called into the hearing. As well, A.H., the managing broker for the Landlord named on the Tenant's Application, called into the hearing. Finally, T.N. the spouse of D.N., the property owner and Landlord named on the Landlord's Application, called into the hearing.

Although the Tenant and his legal counsel called in prior to the start time of the hearing, their telephone was on mute such that I was not able to hear them. Approximately 30 minutes into the hearing S.P. announced their presence and confirmed that they had been present during the entirety of the hearing.

### **Preliminary Matter—Naming of Landlord**

Introduced in evidence was a copy of the residential tenancy agreement confirming that the agreement was between the Tenant and a property management company acting on behalf of the owner. The managing broker for the company, A.G., attended the hearing before me. A.G. confirmed that he managed the property from 2008 to 2010 but since that time has had no dealings with the property.

D.N., the Landlord named on the Landlord's Application, is the property owner. His spouse, T.N., attended the hearing as his agent and advised that in 2010 they took over management of the rental property.

Section 64(3)(c) of the *Act* allows me to amend an Application for Dispute Resolution. I therefore amend the Tenant's Application to name the Landlord as D.N. As the property management company was no longer a party to the proceeding, A.H. disconnected from the hearing at approximately 11:13 a.m.

Preliminary Matter—Agreement

The parties confirmed that they reached a mutual agreement with respect to the end of the tenancy such that the Tenant will vacate the rental unit by 1:00 p.m. on January 31, 2019. Pursuant to section 63 of the *Residential Tenancy Act*, I record their agreement in this my Decision and resulting Order. As the parties resolved this matter by agreement I make no findings of fact or law with respect to their relative claims.

The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the nature of this full and final settlement of this matter. The terms of the settlement are as follows.

1. The Tenant will vacate the rental unit by no later than 1:00 p.m. on January 31, 2019.
2. The Landlord is entitled to an Order of Possession effective 1:00 p.m. on January 31, 2019. This order may be filed in the Supreme Court and enforced as an order of that Court.

Preliminary Matter—Supreme Court Proceedings

The balance of the claims before me related to the Landlord's request for monetary compensation for unpaid rent.

The Tenant's counsel advised that on October 16, 2018 the Landlord filed a Notice of Claim in the B.C. Supreme Court seeking the payment of rent. On November 26, 2018, the Tenant filed a counter claim. The file number for that action is included on the unpublished cover page of this my Decision.

Section 58(2)(c) of the *Residential Tenancy Act* provides as follows:

58 ...

(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

...

(c) the dispute is linked substantially to a matter that is before the Supreme Court.

I find that the parties' monetary claims are squarely before the B.C. Supreme Court such that, pursuant to section 58(2)(c) I lack jurisdiction to resolve such disputes. I therefore decline jurisdiction to resolve the parties' monetary claims. Those matters shall be dealt with in the B.C. Supreme Court.

### Conclusion

The parties agreed to a mutual agreement to end tenancy. Pursuant to this agreement the Tenant shall vacate the rental unit on January 31, 2019. The Landlord is entitled to an Order of Possession effective at that time.

The parties' monetary claims are the subject matter of a claim before the B.C. Supreme Court; pursuant to section 58(2)(c) of the *Act* I decline jurisdiction over these matters.

The Landlord's request to recover the filing fee is denied.

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: January 28, 2019

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Residential Tenancy Branch