



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFT, CNL, FFT, LAT, LRE

Introduction

The hearing scheduled for the morning of January 31, 2019 dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Notice**") pursuant to section 49;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlords' right to enter the rental unit pursuant to section 70; and
- authorization to recover her filing fee for this application from the landlords pursuant to section 72.

At the outset of the hearing, counsel for the tenant advised that the parties were scheduled for another hearing on February 25, 2019, dealing with the landlords' application pursuant to the Act for:

- an Order of Possession for the landlord's use pursuant to sections 49 and 55; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The parties requested that the landlords' application be heard at this hearing. As both parties consented to this, and the tenant had already received the landlords' evidence (by virtue of their request to hearing the landlords' application with their own, I find that the tenant has had sufficient time to review the landlords' evidence), I agreed with this request, as these two applications deal with similar issues. This decision will address both applications.

Both parties attended the hearing, and had legal representation. Their representatives made submissions on the parties' behalfs, and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Jurisdiction

The tenant's counsel contested the enforcement of the Notice on the basis that the Residential Tenancy Branch does not have jurisdiction to hear this matter, pursuant to section 58(2)(c), which reads:

Determining disputes

(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.

The tenant submitted into evidence a copy of a Notice of Family Claim (filed in the Supreme Court of British Columbia) in which the tenant is a respondent and a claimant by counterclaim, and the landlords are respondents by counterclaim (the "**Counterclaim**"). The landlords are the brother-in-law and sister-in-law of the tenant. The tenant and her husband (who is also a party to the Counterclaim) are separating.

In the Counterclaim, the landlords (and the husband) allege that they are owners of the property in which the tenant currently resides (the "**Property**"). The tenant claims that she has an interest in the property as well, and that the landlords are holding the Property in trust for her.

At the hearing, the landlords' representative took me through the history of the ownership of the Property. He did so in order to demonstrate that the tenant was never held legal title to the Property, and as such, there should be no issue of my accepting jurisdiction. He further submitted that the landlords were losing revenue by being unable to rent out the Property.

The tenant's counsel argued that the Counterclaim and the claims before me were substantially linked, as the question of ownership of the Property (which is being dealt with in the Counterclaim) is necessary to determine whether there is a tenancy relationship between the parties.

I find that the issue of the claims before me and the counterclaim are substantially linked and are before the Supreme Court. I make no findings on the matter, and decline jurisdiction pursuant to section 58(2).

As I have no jurisdiction to hear either application, I cannot make any order in relation to reimbursement of fees (as requested by the tenant), cancelling or upholding the validity of the Notice, or any other relief sought by the parties. I direct the parties' attention to section 58(4) of the Act, which they may find of assistance in resolving these matters.

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: February 6, 2019

Residential Tenancy Branch