



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

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

- a monetary order for unpaid rent in the amount of \$26,600.00 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Matter - Jurisdiction

This claim stems from the non-payment of rent by two tenants over a prolonged period of time. One of the tenants is the landlords' son (hereinafter, "**AL**"). The other tenant, and respondent in this application, is his wife (hereinafter, "**LR**"). In early 2017, the tenants separated.

The landlords are claiming against LR only for unpaid rent in the amount of \$26,600.00 for the period of time from January 2014 to April 2017 (hereinafter, the "**Arrears**").

LR claims that she and AL are involved in a Supreme Court action relating to their separation and that in that proceeding AL is seeking unequal reappportionment of the Arrears. The Supreme Court action has not yet gone to trial.

Section 58(2) of the Act, in part, states:

(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.

If the matter of the existence and amount of the Arrears is before the Supreme Court, I do not have jurisdiction to adjudicate the landlords' claim, as these are issues central to any determination I might make in the present application.

LR did not upload any pleading documents from the Supreme Court action in advance of the hearing. Rule of Procedure 3.15 requires that a respondent's documentary evidence be provided to the Residential Tenancy Branch and an applicant not less than seven days before the hearing. This did not happen in the present case.

However, Rules of Procedure 3.17 and 3.19 provide me the discretion to admit evidence outside of the limit set out in Rule 3.15. In light of issue before me (whether I have any jurisdiction whatsoever to hear the landlords' claim), I elected to exercise my discretion, and permit LR to submit copies of the pleadings from the Supreme Court action into evidence during the hearing. Copies of these documents were provided to the landlords during the hearing, and the landlords were afforded an opportunity to make submissions about them.

The Supreme Court pleadings state that AL is seeking the "unequal division of family property and family debt."

Section 86 of the *Family Law Act*, SBC 2011, c 25, defines "family debt":

Family debt

86 Family debt includes all financial obligations incurred by a spouse

(a) during the period beginning when the relationship between the spouses begins and ending when the spouses separate, and

(b) after the date of separation, if incurred for the purpose of maintaining family property.

The landlords allege that the Arrears were incurred between 2014 and 2017. According to the Supreme Court pleadings, LR and AL began living together in a marriage-like relationship in 2010, and were separated on or about February 2, 2017.

As such, the Arrears were allegedly incurred during LR and AL's relationship. Accordingly, the Arrears are "family debt".

As the issue of division of family debt is before the Supreme Court, I am satisfied that the dispute in the present action is linked substantially to the matter before the Supreme Court. As stated above, in the present action, I would need to determine whether the Arrears are actually owed, and, if so, what their correct amount is. These same issues will need to be addressed by the Supreme Court in the Supreme Court action.

Based on the foregoing, I find that, per section 58(2) of the Act, I do not have jurisdiction to hear the landlords' application. As such, I dismiss the application, without leave to reapply.

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 15, 2019

Residential Tenancy Branch