



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNRL-S

Introduction

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

- a monetary order for unpaid rent and compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

SP, counsel for the tenant, attended the hearing with his client. Both parties attended the hearing and were given a full opportunity to be heard and make submissions.

Preliminary Issue – Jurisdiction

The tenant and his counsel produced Supreme Court of BC ("SCBC") pleadings relating to a pending civil claim filed by the landlord on October 16, 2018, and a counter claim filed by the tenant on November 26, 2018.

I asked all parties to advise regarding their position as to whether this matter is substantially linked to an SCBC matter, as per section 58 of the *Act*. The tenant agreed that this matter should be heard at the SCBC, as there is a substantial link. Counsel for the tenant also submitted that this is a subsequent application made by the landlord before the RTB for a monetary order for unpaid rent, even though an Arbitrator had already declined jurisdiction in a previously scheduled hearing for January 25, 2019. The landlord filed this new application for a monetary order for unpaid rent on February 8, 2019, despite the fact that the Arbitrator indicated in her decision dated January 28, 2019 that she was declining jurisdiction as she found the matters substantially linked to the matters before the SCBC. The tenant provided a copy of this decision in their

evidentiary materials. Counsel for the tenant expressed concern in the hearing about the landlord's repeated attempts to pursue the same claims, and the related time and costs in having to respond to these claims.

The landlord responded that he believes that this matter should be heard during this hearing as he believes the matters are unrelated. The landlord is seeking a monetary order for unpaid rent for the months of October and December 2018, and January 2019. The landlord denies that he had made excessive or repeated claims related to the same matters.

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.

This current application relates to the landlord's claim for unpaid rent. It is clear that the matters before the SCBC are related to issues involving this same tenancy, and matters of unpaid rent. As such, I find that the landlord's Application is linked substantially to a matter that is currently before the SCBC, as per section 58(2)(c) of the *Act*, and I decline jurisdiction to hear this matter.

I note that in the previous decision dated January 28, 2019, the Arbitrator had already declined jurisdiction to hear the landlord's monetary claim as she had made the determination that the matters were already before the SCBC. I remind all parties that failing to abide by the *Act*, tenancy agreement, or a Director's Order could possibly result in having to compensate the other party for the losses associated with these

breaches, or the imposition of Administrative penalties as allowed by section 87.3 of the *Act*.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

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: May 30, 2019

Residential Tenancy Branch