



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL; MT, CNR, FFT

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 1, 2019 ("10 Day Notice"), pursuant to section 66;
- cancellation of the landlord's 10 Day Notice, pursuant to section 46; and
- authorization to recover the filing fee for her application, pursuant to section 72.

The landlord, the other beneficiary of the estate, the landlord's lawyer, and the tenant 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 landlord confirmed that his lawyer had permission to speak on his behalf at this hearing. This hearing lasted approximately 12 minutes.

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

The landlord's lawyer said that he did not receive a copy of the tenant's application for dispute resolution. The tenant claimed that she served the landlord by leaving a copy at his lawyer's address. The landlord's lawyer stated that he assumed that the tenant was disputing the landlord's 10 Day Notice. He confirmed that he wanted to proceed with this hearing and did not want to adjourn the matter. I proceeded with hearing the tenant's application, together with the landlord's application, on the basis of the landlord's lawyer's consent.

Issue to be Decided

Should both parties' applications be heard at the Supreme Court of British Columbia ("SCBC") or the Residential Tenancy Branch ("RTB")?

Background and Evidence

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 in her evidence and testimony at the hearing.

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 both parties' applications, pursuant to section 58 of the *Act*, because the rental unit is currently in probate at the SCBC. She claimed that she is a 1/3 beneficiary of the estate, which includes the rental unit.

The landlord objected to the matter being heard at the SCBC. He said that even though the rental unit was currently in probate at the SCBC, this was a separate tenancy issue since there was a written tenancy agreement and the tenant had been residing in the rental unit for so long. He said that even though the tenant is a 1/3 beneficiary of the estate, which includes the rental unit, the rental property would likely be sold and the tenant may receive some of the profits, but nothing would be determined until after probate.

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.

Both parties agreed that the tenant is a 1/3 beneficiary of the estate, which includes the rental property, and the matter is currently before the SCBC for probate. I find that the outcome of probate will impact a determination about the tenancy.

Therefore, I find that both parties' RTB applications are 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 both parties' applications. I further notified both parties that as per section 58(4)(a) of the *Act*, if either party intends to pursue their application further, they could file it at the SCBC for a determination. Both parties confirmed their understanding of same.

Conclusion

I decline to exercise jurisdiction over both parties' applications. I make no determination on the merits of both parties' applications. 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: October 10, 2019

Residential Tenancy Branch