



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT, MT

Introduction

This hearing convened as a result of a “Tenant’s Application for Dispute Resolution” filed on September 16, 2019, in which the Applicant sought to cancel a 10 Day Notice for Unpaid Rent or Utilities, an order for more time to make such an application as well as recovery of the filing fee.

Both parties called into the hearing. The Applicant, G.K., called into the hearing, as did his legal counsel, J.G. The Respondent was represented by an agent, A.K.

Jurisdiction

On the Details of Dispute section of the Application the Applicant wrote that he is a 2/3 owner of the dispute address, and there is no tenancy agreement. The Applicant further writes that the dispute is not within the jurisdiction of the *Residential Tenancy Act*.

A review of materials filed confirms that the Applicant is an owner of the property in which the rental unit is located. Further, the materials confirm that the Respondent commenced an action in the B.C. Supreme Court, relating to the alleged tenancy, and claiming the sum of \$87,000.00.

The power and authority of the Residential Tenancy Branch is derived from the *Residential Tenancy Act*. The dispute resolution process does not create a court and as such, Arbitrators delegated under the *Act*, do not have inherent powers arising under the common law which are possessed by a judge.

Based on the evidence before me, I am not satisfied that I have jurisdiction under the *Residential Tenancy Act* to hear the dispute between the parties.

The undisputed evidence is that the Applicant is a partial owner of the property in question.

Section 1 of the *Residential Tenancy Act* provides the following definition of Landlord:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

As a partial owner of the property, the Applicant, is a potential Landlord, not a Tenant.

Further, the undisputed evidence is that the Respondent has commenced an action in the B.C. Supreme Court, alleging a tenancy exists and rent has not been paid.

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.

As this matter is linked substantially to a matter that is before the Supreme Court, I decline jurisdiction.

I also note that the Respondent's claim exceeds the jurisdiction of the Residential Tenancy Branch, which is \$35,000.00.

The parties confirmed there is a further hearing scheduled for December 6, 2019. This hearing was scheduled as a result of an Application filed by the Respondent. As the issues between the parties are substantially before the Supreme Court, and I have declined jurisdiction, the parties are encouraged to cancel December 6, 2019 hearing.

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: November 19, 2019

Residential Tenancy Branch