



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FFL

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55; and
- authorization to recover the filing fee for his application, pursuant to section 72.

The applicant's agent, the respondent, and the respondent's lawyer 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 applicant's agent confirmed that he had permission to represent the applicant at this hearing. The respondent confirmed that his lawyer had permission to speak on his behalf at this hearing. This hearing lasted approximately 25 minutes.

The respondent's lawyer confirmed receipt of the applicant's application for dispute resolution hearing package and the applicant's agent confirmed receipt of the respondent's evidence package from a previous RTB hearing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the respondent was duly served with the applicant's application and the applicant was duly served with the respondent's evidence package.

The applicant's agent confirmed that he had no objection to the respondent's evidence being submitted from the previous RTB hearing. Both parties confirmed they were ready to proceed with this hearing.

Issue to be Decided

Should the applicant's application 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 respondent raised the matter in his evidence and the respondent's lawyer raised the issue at the outset of this hearing.

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the applicant's claims and my findings are set out below.

The respondent's lawyer stated that this matter should be heard at the SCBC, as there is a substantial link. He said that the RTB does not have jurisdiction to hear the applicant's application, pursuant to section 58 of the *Act*. He claimed that the rental unit, this tenancy and the issue of rent (which he claims is commercial, not residential rent) is currently before the SCBC, pursuant to the applicant's Notice of Civil Claim, filed by the applicant on August 22, 2019 ("NCC"). The respondent provided a copy of the NCC and the respondent's Response, filed on September 20, 2019.

The respondent's lawyer further submits that the respondent is a 2/3 owner in the rental unit, while the applicant is only a 1/3 owner, so the respondent is properly defined as a "landlord" not a "tenant" under the *Act*. The respondent provided a title search to support his claim.

The respondent's lawyer pointed to the previous RTB hearing decision, made by a different Arbitrator on November 19, 2019, the file number of which appears on the front page of this decision. He confirmed that the previous hearing dealt with the same parties, tenancy, and notice to end tenancy for the respondent's application. He maintained that the Arbitrator refused jurisdiction because the respondent was a landlord and the matter was before the SCBC. The respondent provided a copy of this previous decision. He said that the Arbitrator noted in that decision that this hearing should be cancelled by the applicant, but the applicant failed to do so.

The applicant's agent objected to this matter being heard at the SCBC. He claimed that the Arbitrator erred in the previous hearing decision because she did not hear submissions from both parties. The respondent's lawyer claimed that the applicant failed to review that decision or apply for judicial review, so he could not attempt to do so at this hearing.

The applicant's agent said that the *Act* does not define a "tenant" and even though the respondent can be defined as a "landlord," since he was a part owner, he could also be considered a "tenant." He referenced case law, which he did not provide for this hearing, indicating that a part owner can also be a tenant. He explained that there was no "substantial" link between this dispute and the matter in the SCBC and that merely having any link does not make this matter appropriate to be heard at the SCBC.

The applicant's agent confirmed that the matter before the SCBC related to potential commercial interests. He said that this current RTB application related to a tenancy with a residential house on the residential property. He maintained that the ownership interest and the monetary amount of rent was properly before the SCBC, but the remainder of the matters were before the RTB. He confirmed that in his experience, a Judge of the SCBC indicated that tenancy claims should be heard at the RTB, while other matters can be heard at the SCBC. The applicant's agent did not provide a case reference or the case law for this claim.

The applicant's agent maintained that only pleadings had been filed at the SCBC, no other motions had been made. He explained that he assisted the applicant with drafting the NCC. He claimed that although the NCC referenced the *Act* in the "legal basis," and there were references to the tenancy, the rental unit, the rent, and an order for vacant possession, those were just references, not the main issues relating to ownership and rent. He maintained that the respondent has previously indicated that the issue of the applicant accessing the rental unit, should be heard at the RTB.

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.*

In the applicant's NCC, which the applicant's agent assisted him in drafting, the applicant stated the following in the relief sought at page 3, in part:

An order terminating said tenancy and directing the Defendant deliver up vacant possession of the said lands; and;

Judgment in favour of the Plaintiff as against the Defendant in the amount of \$87,500.00 in respect of rents due and payable by the Defendant to the Plaintiff for unpaid rent for the period of February 1, 2019 to and including August 31, 2019 and \$410.96 per diem from and including September 1, 2019 to and including the date on which the Defendant vacates said lands; or

In the alternative Damages for the Plaintiff in the amount of \$87,500.00 plus diem of \$410.96 in respect of said implied tenancy as set out above, and; ...

I find that this current RTB application by the applicant, relating to an order of possession, is linked "substantially" to the matter that is currently before the SCBC.

In his NCC, the applicant refers to the *Act* as forming a legal basis of his claim against the respondent. I do not find the applicant's reference to the *Act* to be incidental or merely a background to his claim, but rather a legal basis for requesting an order of possession and a monetary order for unpaid rent. The applicant references the tenancy, the unpaid rent, and requests an order of possession for the rental unit in his NCC, as noted above.

The basis for the applicant's request for the order of possession in this RTB hearing is the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 21, 2019 ("10 Day Notice"), which indicates that the respondent failed to pay rent of \$87,500.00 to the applicant. This 10 Day Notice was supplied by the applicant for this hearing.

Therefore, I find that the applicant's RTB application is 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.

As per section 58(4)(a) of the *Act*, if the applicant intends to pursue this application further, he can do so at the SCBC.

Conclusion

I decline to exercise jurisdiction over the applicant's application.

I make no determination on the merits of the applicant's application.

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: December 06, 2019

Residential Tenancy Branch