



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPRM-DR, OPR-DR, FFL, CNR, OLC, FFT**

Introduction

This hearing dealt with applications from both parties pursuant to the *Residential Tenancy Act* (the “Act”).

The landlords applied for:

- An order of possession pursuant to section 55;
- A monetary award for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the landlords pursuant to section 72.

The landlords named the individual tenant as the respondent. The parties agreed that the actual tenant, as provided on the written tenancy agreement, is the numbered corporate entity. The tenant confirmed that they are authorized to represent the numbered company. As the parties agreed that the proper respondent is the corporate entity pursuant to section 64(3) of the Act and Residential Tenancy Rule of Procedure 7.13 I amend the application to remove the individual respondent and replace it with the numbered company.

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

As both parties were present service was confirmed. The parties each confirmed receipt of the respective applications. Both parties raised issues with the service of evidence. The landlords say that they were not provided with an evidence package separate from the materials contained in the tenant's hearing package. The tenant said that the evidence package served by the landlord consisted of blank pages. While both parties raised issues with the contents of the materials, I find that the parties have been served with the appropriate materials in accordance with sections 88 and 89 of the *Act* and have been sufficiently served in accordance with section 71 of the *Act*.

Background and Evidence

There is ongoing litigation pertaining to the subject property before the Supreme Court of British Columbia. The tenant submitted into evidence SCBC pleadings relating to the pending civil claim filed by the tenant on April 19, 2020. Among the relief sought is declaration that the tenancy agreement has been breached and terminated.

The parties both confirmed that the civil claim is still before the SCBC and it has not yet been resolved.

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.

It is clear that the present Application pertains to the same property that is before the SCBC, which involves both parties, and where a determination has yet to be made in regard to the agreement between the parties. As such, I find that both of the parties' applications are linked substantially to a matter that is currently before the SCBC, as per

section 58(2)(c) of the *Act*. Consequently, I find that I have no jurisdiction to consider either matter.

Conclusion

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

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 8, 2020

Residential Tenancy Branch