# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

**Dispute Codes** **FFL, MNRL, MNDL, MNDCL**

**Introduction**

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $35,000 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:12 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The applicant landlord ("**PM**") attended the hearing. He was assisted by the co-landlord ("**TZ**") who is not named as a party to this application. Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that PM, TZ, and I were the only ones who had called into this teleconference.
PM testified he served that the tenant with the notice of dispute resolution form and supporting evidence package via registered mail on December 12, 2019 and April 14, 2020 respectively. He provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant is deemed served with these packages on December 17, 2010 and April 19, 2020 respectively, five days after PM mailed them, in accordance with sections 88, 89, and 90 of the Act.

**Preliminary Issue - Jurisdiction**

Upon my review of the landlord's application materials, I discovered a petition filed by PM and TZ against the tenant and her mother, as well as against the Residential Tenancy Branch (the "**RTB**") and two officers of arbitration (the "**Petition**"). The Petition was filed in the Supreme Court on February 4, 2020.

In the Petition, PM applies for the following orders against the tenant and her mother:

1) order to pay forthwith for agreement signed;
2) order to prevent further unnecessary, frustrated, vindictive alleged allegations;
3) order to pay forthwith monetary order, supreme court costs, penalties, special costs
4) order for damages caused of personal health; and
5) order for costs perhaps special costs, penalties, as per rules, agreements.

I asked PM to provide me with the details of each of these orders sought. He testified that he seeks the monetary orders sought on the basis of an agreement between him and the tenant (signed by her mother) that she would pay him $2,100. He testified that he has previously obtained a default judgment against the tenant pursuant to another supreme court claim, which the tenant has failed to pay. He testified that at the end of the tenancy the tenant caused significant damage to the rental unit (including damage by cigarette smoke), and she failed to clean the rental unit. He also testified that the tenant caused him personal damage by smoking cigarettes which damaged his health.

I asked the tenant if the relief sought in the Petition overlapped with the relief he seeks in the present application. He stated that the two were the "exact same thing".

Section 58(2) of the Act states:

> **Determining disputes**
> **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.

The BC Supreme Court considers this section in *Gil v Lloyd*, 2019 BCSC 1455. It wrote:

> [34] Thus, the expression "linked substantially" is to be construed as requiring that the residential tenancy dispute be sufficiently connected to a matter in this Court to warrant it being heard and decided with that matter as contemplated by Rule 22-5(8). It follows that the test to be applied must be the test used to determine whether proceedings should be consolidated under Rule 22-5(8). That test has been well-articulated in case authority.
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> [35] The purpose of consolidation is to avoid a multiplicity of proceedings. An order for consolidation or the hearing of two matters together is a discretionary one that involves a consideration of the following questions: (1) Do common claims, disputes and relationships exist?; and, (2) Are the actions so interwoven that it will make separate trials at different times and before different judges undesirable and fraught

> with additional expense? The proper considerations include the saving of time and expense and the better administration of justice that might result from a joint trial, given the existence of common questions of law or fact bearing sufficient importance in proportion to the rest of the action.
>
> [emphasis added]

Based on the testimony of PM, and on the Petition entered into evidence, I find that the subject matter and relief sought by the landlord in this application is substantially linked to the subject matter and relief sought by PM and TZ in the Petition, as the actions are "so interwoven that it will make separate trials at different times and before different judges undesirable and fraught with additional expense". In PM's own words, the relief sought against the tenant in the Petition and the current application is "exact same thing". I find that this meets the standard of "so interwoven" required by the court in *Gil.*

As such, I decline to resolve this dispute, per section 58(2). The issues sought to be resolved in this dispute are before the Supreme Court of British Columbia and are therefore to be adjudicated by that court.

I make no findings of fact or determination as to the merits of this application.

I dismiss the landlord's application, with leave to reapply.

I additionally note that during the during hearing, PM mentioned several times that he would be willing to negotiate a settlement with the RTB of the aspects of the Petition relating to it and its arbitrators. I advised him several times that I had no authority to do so or to bind the RTB in any way with respect to the Petition. He testified that he has served the RTB with the Petition but has received no response. I advised him that I could not and would not accept service of the Petition on behalf of the RTB. I advised him I would bring the Petition (which was entered into evidence) to the attention of my direct superior, but that this would also not constitute service of the Petition of the RTB.

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 12, 2020

Residential Tenancy Branch