



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

Introduction

This hearing dealt with an application pursuant to section 55 of the *Residential Tenancy Act* (the “Act”) for an order of possession on the basis of a 2 Month Notice to End Tenancy for Landlord’s Use.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The two named respondents were represented by their agent BB.

As both parties were present service of documents was confirmed. The parties each testified that they were served with the materials. Based on the testimonies I find each party was duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Does this matter fall under the jurisdiction of the Residential Tenancy Branch?
If so, is the applicant entitled to an Order of Possession?

Background and Evidence

The parties agree on the following facts. The current registered owners of the subject property are the applicant and the respondents’ agent BB. BB’s adult father resides in a suite in the rental building. There is ongoing litigation between the applicant, BB and BB’s father before the Supreme Court of British Columbia pertaining to ownership and interest in the rental property among other relief. Certificates of Pending Litigation have been registered against the rental property.

The named respondents are the adult child of BB and their partner. The applicant submits that there is an enforceable tenancy agreement between the parties. The applicant testified that there was initially a written tenancy agreement though no copy an agreement was submitted into evidence. The applicant testified that monthly rent was \$1,100.00 payable on the first of each month though they submitted that rent was \$1,200.00 monthly in their application.

The applicant resides in a trailer parked on the rental property. The applicant testified that they were issued a bylaw infraction notice from the municipality for parking their trailer on the residential property. The applicant issued a 2 Month Notice to End Tenancy for Landlord's Use dated July 18, 2020 on the respondents stating they intend to occupy the rental unit.

The respondents' agent BB testified that the respondents are permitted to occupy the rental property as part of a family arrangement, and this is not a landlord-tenant relationship. BB testified that no rent was ever payable or collected, that there is no written tenancy agreement and any Notice to End Tenancy is unenforceable. The respondent also submits that this matter is substantially linked to the ongoing litigation before the Supreme Court and therefore outside of the jurisdiction of the Branch.

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 the applicant, and where a determination has yet to be made in

regard to the applicant's interest in the property. As such, I find that the present application is 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 this matter.

I note parenthetically, that while the applicant submits that there is a valid landlord-tenant relationship between the parties, no tenancy agreement was submitted into evidence, the applicant gave testimony which contradicts details of the tenancy they submitted in their written application and the existence of a tenancy is wholly refuted by the respondents' agent BB who is purportedly a co-landlord. Nevertheless, as I find that the present application is outside of the jurisdiction of the Branch due to ongoing litigation I find it unnecessary to make a determination on the existence of a tenancy.

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: October 15, 2020

Residential Tenancy Branch