



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNR FFT

### **Introduction**

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (“the Act”) for:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*.

Both parties attended the hearing with their legal counsel, and were given a full opportunity to be heard and make submissions.

### **Preliminary Issue – Jurisdiction**

Both parties confirmed in the hearing that the applicant in this matter has filed a civil claim in the Supreme Court of BC which involves the same rental address in this application. The home is owned by the respondents DS and RS, whose mother passed away on March 31, 2019. The mother’s name was removed from the title on May 10, 2019. The dispute relates to the applicant’s claim and right to reside in the home as the former Common-Law spouse of the deceased mother. The applicant in this matter has filed a civil claim seeking several orders including an order that the applicant may continue to live in the home.

The respondents have filed their own petition before the Supreme Court to remove the applicant from the premises as they consider the applicant to be an overholding tenant.

## **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.*

I find that this current application relates to the applicant's right to remain in the home. It is clear that the matters before the SCBC are related to the same parties and address in this dispute. As such, I find that this Application is linked substantially to a matter that is currently before the SCBC. As per section 58(2)(c) of the *Act*, I decline jurisdiction to hear this matter.

Counsel for the applicant inquired about the applicant's right to recover the filing fee for this application. The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of this case, I find that the applicant is not entitled to recover the \$100.00 filing fee paid for this application.

## **Conclusion**

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

As I was not required to make a decision on the merits of this case, the applicant must bear the cost of the filing fee for this application.

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: June 10, 2021