



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR, OPL, FFL**

Introduction

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

The applicant sought:

- An Order of Possession for unpaid Rent pursuant to sections 46 and 55;
- An Order of Possession for Landlord’s Use of Property pursuant to sections 49 and 55; and
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

The applicant attended the hearing with the applicant’s agent/spouse, MB (“applicant”). The respondent attended the hearing. As both parties were present, service of documents was confirmed. The respondent acknowledged service of the applicant’s Notice of Dispute Resolution Proceedings and the applicant acknowledged service of the respondent’s evidence. Both parties confirmed they had no issues with timely service of documents. The hearing process was explained to both parties and they were advised that recording of the hearing was prohibited.

Issue(s) to be Decided

Does the director of the Residential Tenancy Branch have the jurisdiction to determine this dispute?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties’ respective positions have been recorded and will be addressed in this decision.

The applicant submits that he purchased the residential property from the respondent on August 1, 2020 and allowed the respondent to remain living in the unit until the respondent's house was finished being built.

The applicant testified that the respondent has been paying rent in the amount of \$4,300.00 per month between the months of August, 2020 to February 2021 when he served the respondent with a Two Month's Notice to End Tenancy for Landlord's Use. Subsequently, the applicant served the respondent with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities when the respondent stopped paying rent.

The applicant acknowledges there was no written tenancy agreement and he did not collect a security deposit from the respondent. Despite this, the applicant submits that he is the respondent's landlord. He and his family want to move into the house that he owns since his own landlord is taking back the property he is currently renting.

The respondent testified that the ownership of the residential property is undetermined. He is the original owner of the house and there were irregularities in the purchase and sale agreement. He alleges the applicant did not pay a down payment of \$20,000.00 to him and the applicant was approximately \$200,000.00 short in payment for the property. He acknowledges paying the applicant \$4,300 per month but that was to financially assist the applicant, who was his friend.

The respondent has filed a Notice of Civil Claim in the Supreme Court of British Columbia and he provided a copy of the Notice as evidence for this hearing. The Notice indicates the respondent seeks:

1. A declaration that [the applicant in this case] is in breach of the Contract of Purchase and Sale;
2. A declaration that [the respondent in this case] is the legal and beneficial owner of the property;
3. An order requiring [the applicant in this case] to transfer the property back to [the respondent in this case] in exchange for a return of [the applicant's] money;
4. A Certificate of Pending Litigation;
5. Damages for Breach of Contract;
6. Special damages;
7. Punitive damages;
8. Special costs or, in the alternative, costs.

The respondent testified that a Response to the Notice of Civil Claim was filed in the Supreme Court, however the matter has not yet been set for trial.

Analysis

Pursuant to section 58(1) of the *Act*, a person may make an application for dispute resolution in respect of the person's rights, obligations and prohibitions under the *Act* or the terms of a tenancy agreement.

Section 58(2) of the *Act* states:

Except as provided in subsection (4) (a), **the director must not determine a dispute if any of the following applies:**

- a) the amount claimed, excluding any amount claimed under section 51 (1) or (2) [tenant's compensation: section 49 notice], 51.1 [tenant's compensation: requirement to vacate] or 51.3 [tenant's compensation: no right of first refusal], for debt or damages is more than the monetary limit for claims under the *Small Claims Act*;
- b) the claim is with respect to whether the tenant is eligible to end a fixed term tenancy under section 45.1 [tenant's notice: family violence or long-term care];
- c) the application for dispute resolution was not made within the applicable time period specified under this *Act*;
- d) **the dispute is linked substantially to a matter that is before the Supreme Court.**

(emphasis in bold added)

The question of the ownership of the residential property is properly before the Supreme Court. As such, the status of the applicant as the respondent's landlord is also in question. Before I can accept the jurisdiction to uphold a notice to end tenancy issued by the applicant, I must be sure that the parties are bound by a landlord/tenant relationship. Without a decision from the Supreme Court, I have no such reassurance. I find that this dispute is substantially linked to the matter before the Supreme Court. Section 58(2) of the *Act* prevents the director or his delegate from resolving this dispute and 58(4) of the *Act* definitively grants the Supreme Court the jurisdiction to do so. Accordingly, I find that the Residential Tenancy Branch does not have the jurisdiction to resolve this dispute.

Conclusion

This dispute is substantially linked to a matter that is before the Supreme Court. Pursuant to section 58(2)(d), the director must not determine this dispute and jurisdiction is declined.

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: July 09, 2021

Residential Tenancy Branch