



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

Introduction

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

- an early end of the tenancy and Order of Possession pursuant to section 56; and
- authorization to recover the filing fee from the respondent pursuant to section 72.

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

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

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

Preliminary Issues – Parties

At the outset of the hearing the parties clarified that this application was unilaterally made by JM who included VD as a co-applicant without their authorization or prior knowledge.

VD is the registered owner in fee simple of the rental property, the party who entered into a tenancy agreement with the named respondent and oppose the present application.

Based on the testimonies of the parties and in accordance with Residential Tenancy Rule of Procedure 7.13 I find it appropriate to remove VD as an applicant to the present proceeding and include them as a third party. The style of cause for this decision is accordingly amended.

Issue(s) to be Decided

Does this matter fall under the jurisdiction of the Act? If so is the applicant entitled to an early end of the tenancy and Order of Possession and to recover their filing fee from the respondent?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the background facts. There is ongoing litigation before the Supreme Court involving the applicant JM and third-party VD. VD is the sole registered owner in fee simple of the rental property. VD entered a tenancy agreement with the respondent MR for use of the basement rooms of the rental property on May 20, 2021. A copy of the handwritten agreement signed by VD and MR was submitted into evidence.

By an Order entered June 30, 2021 JM was granted interim exclusive occupancy of the rental property effective June 30, 2021. A copy of the Order was submitted into documentary evidence. The parties testified that they are scheduled to next appear in court on September 1, 2021 to deal with an application by VD to vary the order of interim exclusive occupancy.

Analysis

Section 58 of the *Act* states, in part, as follows:

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

...

(d) the dispute is linked substantially to a matter that is before the Supreme Court.

(4) The Supreme Court may on application, hear a dispute referred to in subsection (2) (a) or (d),

(a) order that the director hear and determine the dispute, or

(b) hear and determine the dispute.

It is clear that the present Application pertains to the same property that is before the SCBC and involves both the applicant and the third party. By their own submissions, the applicant's interest in the rental property arises from the order of June 30, 2021 which grants interim exclusive occupancy. I accept the testimony of the parties that there is ongoing litigation pertaining to the parties' interest in the property.

I find that any finding on whether the applicant is a landlord as contemplated under the Act, and has standing to seek an early end of this tenancy would necessarily involve a determination of their interest in the rental property. Based on the testimonies of the parties I accept that the issue of interest in the property is a subject of ongoing litigation before the Supreme Court that has yet to be resolved.

As such, I find that the present application is linked substantially to a matter that is currently before the Supreme Court, as per section 58(2)(d) 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: August 30, 2021

Residential Tenancy Branch