



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, OLC, MNDCT, RP, LRE**

Introduction

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

- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Notice**") pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$1.00 pursuant to section 67; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

The tenant attended the hearing. The landlord was represented at the hearing by one of its owners ("**RM**") and counsel ("**AB**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Civil Action

At the outset of the hearing, I raised the issue as to whether the Residential Tenancy Branch was the proper forum for this dispute to be adjudicated. Both sides made submissions on this point.

On June 24, 2021, the respondent filed a Notice of Civil Claim in the BC Supreme Court (the "**Civil Claim**") against RH seeking relief which includes an order for vacant possession of the property which RH resides (the "**Property**").

In the Civil Claim, the respondent alleges that the written agreement whereby RH is permitted to reside on the Property is not a "tenancy agreement", but rather a commercial contract whereby RH provides services to the respondent, in exchange for RH being able to use and operate his business from the Property at no cost.

I understand that the tenant has filed a Response to Civil Claim and disputes the existence of the Agreement and alleges that there is an oral tenancy.

Section 58(2)(d) states:

Determining disputes

58(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.

This issues in the current application are substantially linked to those in the Civil Claim. In the Civil Claim, the respondent seeks an order of possession for the Property. In this application, RH seeks an order cancelling a Notice to End Tenancy (essentially, a notice that the landlord wants possession of the Property). These are two sides of the same issue: whether RH may remain on the Property.

In order to adjudicate this claim, I must be satisfied that I have jurisdiction to do so. Section 2 of the Act states:

[...] this Act applies to tenancy agreements, rental units and other residential property.

The issue of whether the agreement, be it written or oral, whereby the tenant is permitted to reside on the Property (the “**Agreement**”) is a “tenancy agreement” as defined by the Act is before the BC Supreme Court.

Accordingly, I cannot make any findings as to whether I have jurisdiction to adjudicate the other matters raised by RH, as in order to do so, I must make a finding as to the nature of the Agreement. If I accept jurisdiction to hear the other portions of RH’s dispute, I will have implicitly found that the Agreement is a “tenancy agreement”. As the question as to the nature of the Agreement is before the BC Supreme Court, I cannot make such a finding.

As such, per section 58(2)(d) of the Act, I decline to adjudicate this matter. I make no findings of fact (either express or implicit) as to jurisdiction, the nature or terms of the Agreement, or any other issue.

The parties will have to resolve their dispute through the BC Supreme Court.

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 27, 2021