



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPM MNRL FFL CNR FFT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by CTJ and KKM who are both seeking remedy under the *Residential Tenancy Act* (Act). CTJ applied for an order of possession based on a mutual agreement and based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 19, 2021 (10 Day Notice) for a monetary order of \$6,000.00 in unpaid rent, and to recover the filing fee. KKM applied to cancel the 10 Day Notice and to recover the cost of the filing fee.

The hearing began on August 26, 2021 and after 12 minutes was adjourned to allow time for KKM's counsel to appear as counsel was called to Supreme Court unexpectedly on a different matter on August 26, 2021. An Interim Decision dated August 27, 2021 was issued, which should be read in conjunction with this decision.

The hearing was reconvened on this date, September 9, 2021, and in attendance was CTJ and his spouse, NS (spouse), KKM, and KKM's counsel, JM (counsel) and the spouse of KKM, JP (JP). All but JP, who was not participating and was a support person for KKM, were affirmed, with the exception of counsel who has already sworn an oath.

The parties were provided an opportunity to ask questions and neither party raised any concerns regarding the service of documentary evidence or their ability to review that evidence prior to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

KKM submits that MD, who passed away in December 2018, signed a testamentary paper delivering MD's real property to him, which is the rental unit listed in the applications before me. While CTJ drew my attention to a Mutual Agreement between the parties dated July 28, 2020 (Mutual Agreement). Counsel for KKM submits that not only has rent not been established between the parties due to CTJ or CTJ's counsel not responding to an email which counsel stated was submitted "without prejudice", but counsel has both filed a Notice of Civil Claim on November 24, 2020 at the Cranbrook Supreme Court Registry, which will challenge the following:

1. The Will of MD
2. Settlement Agreement dated July 28, 2020.

Counsel submits that while CTJ has yet to be served, KKM is still within the timelines to serve the Notice of Civil Claim, which seeks to vary the will of MD and set aside or vary the Settlement Agreement dated July 28, 2020.

Counsel also submits that the Supreme Court is the proper venue to have this matter resolved and not the RTB.

Given the submissions of counsel and the fact that CTJ, who is also the executor of the Estate of MD, did not dispute that a Civil Claim has been filed in relation to the real property, which is the subject of both applications before me, I find I must decline jurisdiction to consider this dispute. I have made this decision pursuant to section 58(2)(c) of the Act, which states:

Determining disputes

58(2) Except as provided in subsection (4), if the director accepts an application under subsection (1), the director must resolve the dispute under this Part unless

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

[Emphasis added]

I find that the subject real property is substantially linked to a matter that is before the Supreme Court and I decline to consider this dispute accordingly.

Conclusion

I decline to hear this dispute due to lack of jurisdiction as noted above.

This decision will be emailed to the parties as noted above.

I do not grant the filing fee for either party due to lack of jurisdiction under the Act.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 9, 2021

Residential Tenancy Branch