



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, FFT**

Introduction

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

An order to cancel a 2 Month Notice to End Tenancy for Landlord’s Use pursuant to sections 49 and 55; and

Authorization to recover the filing fee from the other party pursuant to section 72.

The applicant CP attended the hearing and the respondent, RZ was represented at the hearing by her counsel, RL. The respondent’s counsel called into the hearing at 11:15 a.m., fifteen minutes after the hearing commenced, advising me that he had mis-scheduled the hearing in his calendar for 11:30 a.m. RZ’s counsel did not dispute being served with the applicant’s Notice of Dispute Resolution Proceedings.

The applicant testified she served the respondent, YZ with the Notice of Dispute Resolution Proceedings by sending it by registered mail to an address obtained from materials supplied to her on Supreme Court proceedings provided by RZ. RZ’s counsel submits that the address the Notice of Dispute Resolution Proceedings was sent to appears to be YZ’s lawyer’s address. Consequently, I am not satisfied the Notice of Dispute Resolution Proceedings was served to YZ in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

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

Background and Evidence

Counsel for the respondent, RZ provided the following evidence. RZ and the applicants entered into a tenancy agreement for a rental property on May 24, 2019, to commence

on July 15, 2019. At the time, RZ was on title as the sole registered owner of the property. Counsel submits that at no time has the ownership on title for the property ever changed to add YZ.

Following a hearing before a Judge of the Supreme Court, a final order was granted on June 11, 2021, granting RZ's father, YZ, one half undivided interest in the rental unit. On November 25, 2021, YZ filed an application in the Supreme Court and the relief sought in the application included an order that RZ transfer one half interest in the property to him as well as an order that RZ terminate the tenancy agreement with the tenant/applicants in this hearing. YZ also sought a writ of possession be issued and that the tenant/applicants be removed from the property. The results of that application, or whether the application was ever heard, are unknown to me.

Counsel for RZ submits that on July 06, 2021, he filed an appeal of the June 11th order at the Court of Appeal. A copy of the Notice of Appeal was provided as evidence and counsel advises that the hearing of the appeal has been scheduled for February 11, 2022. The order granting YZ one-half interest in the rental property is included in the appeal filed by RZ.

The applicant in this hearing testified that she was never served with a notice to end tenancy, although there is an affidavit from YZ in RZ's evidence package stating that YZ personally served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use on September 29, 2021. The applicant in this hearing reiterated that she only found out about the notice to end tenancy when RZ's lawyer sent it to her as a courtesy. RZ's counsel submits that RZ, the sole landlord of the rental unit, never issued a 2 Month Notice to End Tenancy for Landlord's Use to the tenant and RZ does not seek to end the tenancy.

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:

- (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**
- (a) the claim is for an amount that is more than the monetary limit for claims under the Small Claims *Act*,
 - (a.1) 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],

- (b) the application was not made within the applicable period specified under this *Act*, or
- (c) **the dispute is linked substantially to a matter that is before the Supreme Court.**
(emphasis added)

Furthermore, Section 58(4) of the *Act* states:

- (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*.

Based on the evidence before me, I find that matters before the Court of Appeal and the Supreme Court are substantially linked to the matter before me. YZ filed an application in the Supreme Court to terminate the tenancy with the applicants in the case before me, and I do not know the outcome of that application. The issue of ownership of the rental unit and subsequent determination of whether YZ is one of the applicants' landlords is still undetermined until the issue is resolved at the Court of Appeal.

58(2) of the *Act* prevents the director or his delegate from resolving disputes substantially linked to matters before the Supreme Court and section 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 at this time.

Conclusion

Based on the above, I decline to rule on this matter as I find the matter is substantially linked to matters before the Supreme Court and the Court of Appeal.

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: January 27, 2022

Residential Tenancy Branch