



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, CNL, OLC, FFT**

Introduction

This hearing was convened as a result an application for dispute resolution (“Application”) made by the Applicant under the *Residential Tenancy Act* (“Act” or “RTA”) for:

- cancellation of a One Month Notice to End Tenancy pursuant to section 46;
- cancellation of a Two Month Notice to End Tenancy for Landlord’s Own Use of Property pursuant to section 49;
- an order the Respondent comply with the Act, *Residential Tenancy Regulations* and/or tenancy agreement; and
- authorization to recover the filing fee for the Application from the Respondent pursuant to section 72(1).

The Applicant, the Respondent and the Respondent’s legal counsel (“CH”) attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Matter – Jurisdiction of Director of the Residential Tenancy Branch (“RTB”)

At the outset of the hearing, I noted the Respondent submitted a Notice of Civil Claim (“Civil Claim”) filed in the Supreme Court of British Columbia (“Supreme Court”) on March 15, 2022. The Civil Claim states, among other things, the aunt (“RH”) of the Respondent owned a three-acre property on which a home (“Home”) is built. The Civil Claim states that, after the death of RH, the Respondent became the executor RH’s estate (“Estate”). The Statement of Claim states the Applicant, at the Respondent’s invitation, moved into the Home on or about November 2020. The Civil Claim states the Respondent does not pay rent. The Civil Claim states that the Respondent, as executor

of the Estate, sent a written demand on or about January 25, 2022 to the Applicant demanding the Applicant vacate the rental unit.

The relief claimed in the Civil Claim, among things, is:

1. damages for trespass;
2. a Writ of Possession; and
3. an injunction to restrain and enjoy the Applicant by themselves, their agents, their servants, or otherwise, from trespassing upon the Property.

The Respondent submitted a counterclaim filed by the Applicant with the Supreme Court on April 5, 2022 ("Counterclaim"). The Counterclaim states, among other things, the Respondent agreed to give the Applicant exclusive use of the Property. The Counterclaim states the Applicant does not pay rent as was agreed in consideration of hours spent and required cleaning up the Property, renovating and paying the utilities and that the Applicant is the Respondent's tenant. In the Counterclaim, the Applicant seeks, among other things:

1. all moving expenses should the court decide the tenancy must be terminated; and
2. all rental payments required payable by the Applicant to take up tenancy elsewhere for the next five year.

CH stated it is the Respondent's position that the Applicant is not occupying the Property as a tenant pursuant to the Act but is occupying the Property pursuant to a revocable license granted by the Respondent. CH stated the Respondent served the Applicant with a written notice on or about January 2022 demanding the Applicant vacate the Property. CH stated the Applicant has not vacated the Property as requested and that she is now trespassing on the Property. CH submitted that the dispute between the parties is linked substantially to a matter before the Supreme Court and, as such, I must decline to hear the Application.

The Applicant stated the Respondent only resided in the rental unit for a short period of time since September 26, 2021 to December 7, 2021 and that the tenancy is not excluded from the provisions of the Act pursuant to section 4(c) of the Act. The Applicant requested I take jurisdiction and hear the Application.

Analysis:

The Applicant submitted that her occupation of the tenancy is pursuant to a tenancy that is subject to the provisions of the Act. The Respondent submits the occupation of the Property by the Applicant is pursuant to a revocable license that has been revoked by the Respondent. CH and the Applicant confirmed the Civil Claim and Counterclaim have not been withdrawn by the parties. CH confirmed the Supreme Court has not made an order for the Director of the RTB to hear the dispute between the parties.

In *Habib Estate v. Komant*, 2017 BCSC 69 (“*Habib*”), Mr. Justice G. P. Weatherill reviewed the residual jurisdiction of the Supreme Court under the Act. At paragraphs 42 to 46 he stated:

- [42] At first blush, this argument seems to have merit. Section 1 of the RTA defines a “tenancy agreement” as “an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit...”. In my view, the agreement between Dominic and Becky to pay \$700 per month would qualify as a “tenancy agreement” under the RTA, being an oral agreement between a property owner and an occupant to rent a residence.
- [43] Assuming it is a tenancy agreement, the RTA does appear to allocate issues relating to a tenancy agreement to the director of the RTA. Sections 84.1(1) and 58(1) read:

Exclusive jurisdiction of director

- 84.1 (1)** The director has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in a dispute resolution proceeding or in a review under Division 2 of this Part and to make any order permitted to be made.

...

Determining disputes

- 58 (1)** Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:
- (a) rights, obligations and prohibitions under this Act;

(b) rights and obligations under the terms of a tenancy agreement that

- (i) are required or prohibited under this Act, or
- (ii) relate to
 - (A) the tenant's use, occupation or maintenance of the rental unit, or
 - (B) the use of common areas or services or facilities.

[Emphasis added.]

[44] Read together, s. 58(1) suggests that issues with a tenancy agreement should be dealt with in a dispute resolution proceeding, which s. 84.1(1) says are within the exclusive jurisdiction of the director. If that is the case, all issues with Dominic's tenancy agreement, which would arguably include this matter involving the plaintiffs' occupancy of the 4495 Residence, should be brought before the director and not before this court.

[45] However, despite the provisions of the RTA that give the director exclusive jurisdiction over tenancy agreements, ss. 58(2), and (4) provide a residual jurisdiction for this court to hear tenancy disputes related to matters before the court. Sections 58(2), and (4) read:

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.

....

- (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.

[Emphasis added.]

- [46] Accordingly, ss. 58(2) and 58(4) give this court residual jurisdiction to hear and decide disputes “linked substantially to a matter that is before the Supreme Court”. As an action has been commenced in this court regarding ownership of the Property, and as Dominic’s tenancy is substantially linked to it and given that what is sought here is an interlocutory order on the parties’ rights with respect to the Property, I am persuaded that this court has jurisdiction to hear the plaintiffs’ injunction application.

Since the decision in *Habib*, subsection 58(2) and 58(4) of the Act have been amended to read:

- 58(2) 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.
- (4) The Supreme Court may, on application regarding 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.

Based on the testimony provided by the parties, I find the Civil Claim and Counterclaim have not been withdrawn by the parties and, as of the date of this hearing, the Supreme Court has not made an order for the Director of the RTB to hear the dispute between the parties.

I find *Habib* supports the proposition that, for the purposes of section 58(2)(d) of the Act, a dispute is linked substantially to a matter before the Supreme Court when an arbitrator, as a delegate of the Director of the RTB, determines an application for dispute resolution, and a civil action before the Supreme Court, involves the same parties and one of the parties claims a beneficial or leaseholder interest in the same residential property.

Based on the above, I find that the dispute before me is linked substantially to a dispute set out in the Civil Claim and Counterclaim before the Supreme Court as those disputes involve the Applicant and Respondent and the Applicant is claiming a leasehold interest in the same residential property. As such, section 58(2)(d) of the Act requires that I must decline jurisdiction to determine the dispute set out in the Application. Pursuant to section 58(4) of the Act, the Supreme Court, may decide to hear and determine the dispute, or alternatively, order that the Director hear and determine the dispute.

Conclusion

Pursuant to section 58(2)(d), of the Act, I find the dispute set out in the Application is linked substantially to a matter before the Supreme Court and, as such, I have no jurisdiction to hear this matter.

I make no findings of fact (either express or implicit) as to jurisdiction, the nature or terms of the tenancy agreement, or any other issue.

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: May 22, 2022

Residential Tenancy Branch