



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing, via telephone conference call, was held on May 13, 2022. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Cancel the Landlord's 2-Month Notice to End Tenancy for Landlord's Use of Property (the 2-Month Notice).

Both parties were present at the hearing and provided affirmed testimony. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue - Jurisdiction

The applicants raised the fact that the parties have an ongoing proceeding with the Supreme Court of British Columbia (SCBC), which calls into question whether I have jurisdiction regarding this application and whether the respondent had the authority to issue the 2 Month Notice (in February 2022). The applicants assert that this matter is "substantially linked" to a SCBC proceeding. Copies of the SCBC Notice of Civil Claim have been provided into evidence, and were filed with the SCBC on or around September 2, 2021.

The Notice of Civil Claim provided into evidence states that the applicants for this proceeding are seeking the following:

RELIEF SOUGHT

- 1. The Plaintiff claims specific performance of the agreement between the Plaintiffs and the Defendant for the purchase and sale of the Property and damages;*
- 2. The Plaintiffs claim in the alternative, damages in lieu of specific performance;*
- 3. The Plaintiff claims in the further alternative, damages for breach of contract.*
- 4. The Plaintiffs claim a certificate of pending litigation.*
- 5. Interest.*
- 6. Costs.*

The applicant for this proceeding also provided a copy of the Certificate of Pending Litigation into evidence, dated March 21, 2022, which was filed with the Land Title Office. A copy of the Land Title record was provided into evidence by the respondent which corroborates that the applicants have filed their Certificate of Pending Litigation against the subject property. This is noted under the “Charges, Liens, and Interests” part of the Land Title document.

The applicants stated that they have a summary trial booked at the SCBC for the week of July 25, 2022, where they seek specific performance of their alleged purchase agreement to buy the subject property as of June 2021. The applicants do not feel the respondent was lawfully allowed to issue a 2 Month Notice in February 2022, given their purchase agreement from the previous year.

The respondent asserted that the matter in this proceeding is not substantially linked with the matter before the SCBC. The respondent stated the matter before the SCBC is whether or not the applicants have the right to purchase the property, which is separate from the matter applied for at this proceeding. The respondent cited the case of *Gill v. Lloyd 2019 BCSC 1455* to demonstrate that there is a specific test which needs to be applied when determining whether or not the matter in this proceeding is “substantially linked” with the matter before the SCBC. The respondent also cited the *Liu v. Tsai 2017 BCSC 2021* to support that I have to consider the potential prejudice to the parties when determining whether the matters are distinct, or substantially linked. The respondent briefly referred to the above noted cases, but I note he did not provide copies of the cases into evidence, and they were not before me. Since the respondent failed to

provide copies of the above noted cases into evidence, it is difficult to determine whether the cases are instructive and relevant, or whether they are distinguishable. As a result, I have placed little to no weight on the above noted cases.

I have reviewed the totality of the application and evidence. Section 58 of the *Act* states the following, in part:

(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.

I also note the following portion of the Act:

What this Act applies to

2 (1) Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, rental units and other residential property.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

In this case, I find it is critical to identify whether or not the applicants have an ownership interest in the property and if they do, it is also important to know what the effective date of any ownership interest would be and what the terms are surrounding that matter. This information would have a material impact on the ability for the respondent to rightfully issue a 2 Month Notice under the Act, which is central to this application. If the applicants have an ownership interest in the property, this may impact whether or not there is and was a tenancy agreement, as defined under the Act; there may not have been a Landlord/Tenant relationship at the time the 2 Month Notice was issued.

The parties have different understandings of what was agreed to, and when with respect to the applicant's interest in the property. This matter is squarely before the SCBC as part of the ongoing claim. The enforceability of the alleged purchase agreement from June 2021 is to be determined by the SCBC.

Considering all of the above, I find this application is substantially linked with the matters before the SCBC, as determining ownership interest has a direct and material impact on whether this claim falls within the Act and whether the respondent lawfully issued the 2 Month Notice, which is the central part of this application. I find I do not have jurisdiction to hear this application, pursuant to section 58(2)(d) of the Act.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

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 16, 2022