



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing convened to deal with the applicant's (JM) application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The applicant applied on May 19, 2022 for an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act and to recover the cost of the filing fee.

The applicant, the third party, (VD), and the tenant attended, the hearing process was explained to the parties, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Does the Act apply to this dispute or am I excluded from hearing this dispute due to jurisdictional issues?

Has this matter been previously decided?

Is the applicant entitled to the relief sought?

Background and Evidence

The evidence showed that a tenancy for the tenant began on May 20, 2021, for the lower level of the home. The applicant resides in the upper level.

The third party, VD, initially testified and stated that he and his father are the registered owners of the residential property and that the applicant has no ownership interest in the property. VD said the applicant was a “common law” for 8 years and that the domestic matters, including interest in the residential property, have been at the Supreme Court of British Columbia for 5 years.

VD confirmed that he was not involved in this dispute and wanted his name removed.

The applicant confirmed that the residential property was purchased in 2009, and placed in the name of VD. That applicant testified that the Supreme Court gave her exclusive occupancy of the property in 2017.

The applicant testified that “the house was in the Supreme Court”, as VD would not allow her to live there.

During the testimony, the parties referred to a previous Decision from the Residential Tenancy Branch (RTB), and provided the application number.

After a review, the Decision of August 30, 2021, by another arbitrator made a Decision on the applicant’s application for the same issues before me. I find it important to record the terms of the previous Decision.

The Decision of August 30, 2021, provided the following in the Preliminary Issues:

The “parties clarified that this application was unilaterally made by JM who included VD as a co-applicant without their authorization or prior knowledge.”

That “VD is the registered owner in fee simple of the rental property, the party who entered into a tenancy agreement with the named respondent and oppose the present application.”

The arbitrator then found it appropriate to remove VD as an applicant to the proceedings and included them as a third party.

Further, the Decision of August 20, 2021, found the following:

It is clear that the present Application pertains to the same property that is before the SCBC and involves both the applicant and the third party. By their own submissions, the applicant’s interest in the rental property arises from the order of June 30, 2021 which grants interim exclusive occupancy. I accept the testimony of the parties that there is ongoing litigation pertaining to the parties’ interest in the property.

I find that any finding on whether the applicant is a landlord as contemplated under the Act, and has standing to seek an early end of this tenancy would necessarily involve a determination of their interest in the rental property. Based on the testimonies of the parties I accept that the issue of interest in the property is a subject of ongoing litigation before the Supreme Court that has yet to be resolved.

As such, I find that the present application is linked substantially to a matter that is currently before the Supreme Court, as per section 58(2)(d) of the Act. Consequently, I find that I have no jurisdiction to consider either matter.

[Reproduced as written]

Analysis

The parties were informed during the hearing, that I cannot re-hear and change or vary a matter already heard and decided upon as I am bound by the earlier decision of August 30, 2021, under the legal principle of *res judicata*. Res judicata is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent application involving the same claim.

I therefore find the Decision of August 30, 2021, constitutes a bar to the applicant's exact claim in the present application.

Additionally, the applicant was instructed in the Decision of August 30, 2021, that their dispute is linked substantially to a matter that is currently before the Supreme Court. I therefore have no jurisdiction to decide the matters in this application.

I therefore decline to hear the applicant's application.

Cautions for the applicant –

I find it important to note that the applicant was cautioned about any further applications for dispute resolution under the Act and naming VD as a landlord/applicant until the matters are resolved in the Supreme Court. Further applications may cause a referral to the Compliance and Enforcement Unit (CEU), a separate unit of the RTB. The CEU has the authority to determine whether administrative penalties are warranted in these circumstances. This Decision could be used by the CEU for consideration of administrative penalties.

The caution was issued due to the applicant **again** naming VD as an applicant without his authority or consent, despite the Decision of August 30, 2021, **and** after being informed in that Decision that the issue of interest in the property in question here was a subject of ongoing litigation before the Supreme Court.

I caution the applicant to not include VD's name on any applications without his consent or authority. I find that the applicant naming VD as a landlord/applicant in this application was deceptive and a false statement.

Conclusion

I decline to hear the applicant's application as I have no jurisdiction to decide the matters for two reasons. A previous Decision of August 30, 2021, decided these matters were before the Supreme Court and also due to the principle of *res judicata*, as these matters were previously decided upon by another arbitrator on August 30, 2021.

I do not grant the filing fee as a result.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 20, 2022

Residential Tenancy Branch