



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: Applicant SA: CNR FFT
Applicant JB: MNR-DR, OPR-DR, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

JB requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72 of the *Act*

SA requested:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover the filing fee for this application pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch’s teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

Preliminary Issue – Jurisdiction

The applicant SA provided in evidence a copy of a Notice of Family Claim that was filed with the Supreme Court of BC (“SCBC”) on February 17, 2021, and which was amended on April 30, 2021. SA testified that a mediation hearing is set for February 2023 in relation to the Claim, which involves the same parties and the address in this dispute. The two parties were previously involved in a romantic relationship that had ended, and the claim relates to whether SA’s claim of interest in the property referenced in this application.

I asked all parties to advise regarding their position as to whether this matter is substantially linked to a SCBC matter, as per section 58 of the *Act*. SA agreed that this matter should be heard at the SCBC, as there is a substantial link. While JB agreed that this matter is substantially linked to a SCBC matter, JB feels that this matter should be heard as it relates to what JB considers a rental property and agreement.

Analysis

Section 58 of the *Act* states the following, in part:

(2) Except as provided in subsection (4), if the director receives an application under subsection (1), the director must determine the dispute 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.

It is clear that the matters before the SCBC are related to issues involving the same parties and address in this dispute. The claim before the SCBC relates to the parties’ interest in the property. As such, I find that both Applications are linked substantially to a matter that is currently before the SCBC, as per section 58(2)(c) of the *Act*, and I must decline jurisdiction to determine the disputes set out in both Applications. Pursuant to section 58(4) of the *Act*, the Supreme Court, may decide to hear and determine the disputes, or alternatively, order that the Director hear and determine the disputes.

Conclusion

Pursuant to section 58(2)(d), of the *Act*, I find the disputes set out in both Applications 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 the nature or terms of the supposed 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: October 25, 2022

Residential Tenancy Branch