



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OLC FFT

Introduction

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

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; 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

At the outset of the hearing, I noted the applicant had submitted in evidence two Notices of Civil Claim (“Civil Claim”) filed in the Supreme Court of British Columbia (“Supreme Court”).

The first Notice of Civil Claim was filed on June 10, 2022, where the plaintiff is NR, and the defendants include AR (the respondent in this matter), GR (the applicant in this matter), as well as FR. AR is named twice in the Notice of Civil Claim, one in his personal capacity, and also in their capacity as Executor of the Estate of ZR. FR, AR, and GR are all children of the plaintiff and the late ZR ("The Deceased"), who died on December 31, 2021.

The Civil Claim states that ZR's Last Will and Testament ("The Will") dated December 15, 2020 divides the Deceased's estate into three equal shares between the three adult children AR, FR, and GR. The Will makes no provision for NR. The respondent in this matter is currently the Trustee and Executor of the Estate of ZR.

At the time of ZR's death, ZR held a total of 3 properties solely in her name, one of which include the property address for this dispute ("the property"). The property was purchased by ZR and NR in 1996, and was the residence of both ZR and NR until 2017. NR moved back to the property in April or May 2022, and has been residing there ever since. GR has been residing at the property since February 2015.

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

1. A declaration that the Deceased's estate has been unjustly enriched by NR's contributions to the property.
2. a declaration that the Deceased failed to provide an adequate, just and equitable inheritance to NR pursuant to s. 60 of the *Wills, Estates and Succession Act*, SBC 2009, c. 13 [WESA].
3. an order pursuant to s. 60 of *WESA* for such provision from the Deceased's estate to NR as the Court thinks adequate, just and equitable in the circumstance for the proper support and maintenance of NR.
4. A Certificate of Pending Litigation to be registered against the property

The Respondent filed their own Notice of Civil Claim on July 5, 2022. The Notice of Civil Claim names GR as one of the defendants, and references various investment properties that do not include the rental address in this application.

The relief sought, among other things include:

1. damages against the Defendants, jointly and severally for conspiracy, conversion, deceit and/or fraud, negligent and/or fraudulent misrepresentation.
2. a declaration that the Defendants individually, and collectively, were unjustly enriched by the Deceased, and their Estate
3. a declaration that the Defendants, jointly and severally, have been unjustly enriched at the expense of the Plaintiff, and the unjust enrichment in the amount of the Profits.

4. a declaration that the various properties referenced in the Notice of Civil Claim are held in trust on behalf of the Deceased's Estate.

The applicant GR filed this application with the Residential Tenancy Branch as they were served with a 10 Day Notice to End Tenancy for Unpaid Rent dated May 31, 2022. GR denies that a tenancy exists, and argues that the property is the family home where GR has been residing since 2015, and where NR currently resides. GR states that the home was owned by their late mother, and there is now a dispute over the ownership of the property, and allocation of shares of the estate amongst the family members, who are now parties to the Civil Claim filed by NR. Counsel for the applicant argued that this dispute is substantially linked to matters before the Supreme Court, and therefore I must decline jurisdiction to hear this matter. Counsel also argued that the amount of unpaid rent sought by the respondent exceeds the small claims limit of \$35,000.00.

AR argued that a tenancy does exist where a verbal agreement was made in 2017 between the Deceased and GR to allow GR to live at the property in exchange for rent in the amount of \$5,000.00 per month. AR states that they are not aware of any rent payments made to date. AR argued that they are not only Executor and Trustee of the Estate, but that the title for the property has been transferred to AR's name.

AR argued that this dispute is not substantially linked to matters before the Supreme Court, and that the Notice of Civil Claim was filed by NR after AR had served GR with the 10 Day Notice to End Tenancy. AR believes that their father NR has been manipulated by GR into filing the Notice of Civil Claim. AR also believes that NR has been convinced by GR to move back to the property in an attempt to vary the Deceased's Will, and in order to reside at the property for free. AR argued that GR is taking advantage of the situation, and that GR is simply squatting in the home.

AR is seeking an Order of Possession as well as monetary order for the unpaid rent as the unpaid rent has accrued to a total of \$320,000.00 as of October 2022. FR argued that the first Notice of Civil Claim was filed by ZR, and that the subject of unpaid rent is unrelated to either Notice of Civil Claim. AR and FR also noted that the property has deteriorated significantly, and that they require a timely resolution of this dispute in order to take rightful possession of the property.

Analysis:

The applicant submitted that no tenancy exists, and that the dispute relates to ownership interests of the property by the family members in this dispute, and NR's application for a variation of the Will pursuant to s. 60 of the *Wills, Estates and Succession Act*, SBC 2009, c. 13 [WESA], as the Supreme Court deems adequate for the provision of an adequate, just and equitable inheritance to NR. The applicant notes that the subject property in this dispute is part of the Notice of Civil Claim filed on June

10, 2022 by the NR, and that the defendants named in the Notice of Civil Claim include both the applicant and respondent in this dispute.

The respondent argued that the dispute set out in this application involves issues related to a tenancy, and issues of unpaid rent, and therefore should be heard through the dispute resolution mechanism of the RTA.

It is undisputed by both parties that two Notices of Civil Claim have been filed with the Supreme Court. The applicant and respondent in this application are both named as defendants in the Notice of Civil Claim filed on June 10, 2022. The rental address stated in this application is also part of the Notice of Civil Claim dated June 10, 2022, which the NR claims to have an interest in, and where NR currently resides with GR. No orders have been made by the Supreme Court for this dispute to be heard by the Director at the RTB.

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 evidence and testimony before me, I accept AR and FR's argument that the Notice of Civil Claim filed on July 5, 2022 by AR is not substantially linked to this dispute. However, I find the Civil Claim filed on June 10, 2022 is substantially linked to this dispute. 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.

In this case, both AR and GR are both named as defendants in the Notice of Civil Claim, and the property is one of the "estate properties" referenced in the Notice of Civil Claim. More specifically, the Notice of Civil Claim relates to the Will of the Deceased, which divides the Deceased's estate into three equal shares between AR, FR, and GR. The reliefs sought relate to lack of provision for NR in the Will, who is the father of the parties in this dispute. The respondent in this dispute is currently the Trustee and Executor of the Estate, and claims ownership interest in the residential property where both NR and GR currently reside. Although AR has argued that GR has manipulated NR into moving back into the property, and filing the Notice of Claim in an effort to

evade the *Act*, I am not satisfied that AR has provided sufficient evidence to support this belief.

Based on the above, I find that the dispute before me is linked substantially to a dispute set out in a Civil Claim before the Supreme Court as the Notice of Civil Claim filed on June 10, 2022 involve the Applicant and Respondent, and the dispute relates to a beneficial interest in the rental 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 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 20, 2022

Residential Tenancy Branch