



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPL

Introduction

The Applicants filed an Application for Dispute Resolution on January 4, 2023 seeking an order of possession in line with the Two-Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice"). The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on May 2, 2023.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The Applicants and the Respondent attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

A representative of the Respondent addressed the prevalent issue in the hearing.

The Applicants prepared documents as evidence for this hearing. They tried to provide this to the Respondent; however, the Respondent allegedly did not retrieve the registered mail. The Respondent's representative stated they learned of this hearing via opposing counsel in a BC Supreme Court separate action.

The Respondent provided a copy of the Notice of Civil Claim between the parties, filed on January 12, 2023, and the Response to Civil Claim (filed by the Applicants here) on February 24, 2023. The Respondent clarified that they did not provide these to the Applicants as evidence specifically for this hearing.

Preliminary Issue - Jurisdiction

The Applicants here described that there was rent that was pre-paid by the Respondent here, in the amount of \$160,000. There was no security deposit paid by the Respondent here. The Applicants submitted that the rent amount was \$1,600 per month. This was for an additional housing structure on the Applicants' land. The Applicants did not produce a written tenancy agreement in the evidence.

The parties disagree fundamentally on ownership of what the Applicants are referring to as the rental unit. The Applicants maintain that the Respondent here is not an owner, while the Respondent presents that they have an equity interest in the property, which is an ownership interest. This is the subject of the Respondent's civil claim started in the BC Supreme Court.

The Applicants' position is that they need the house on the property to be occupied by additional family members. They are seeking to end what they have deemed a tenancy for this reason, with service of a Two-Month Notice.

The Respondent provided a copy of a Notice of Civil Claim filed by them in the BC Supreme Court on January 12, 2023. They seek the particular relief of a declaration that they hold a one-third ownership interest in the property.

The Applicants' formal response was filed on February 24, 2023. Therein, they state they agreed to the Respondent living in the house; however, this would require payment of a monthly rent, agreed to by the Respondent.

The *Act* section 58 provides the following:

(2) . . . if the director accepts an application. . . the director must resolve the dispute . . . unless

(c) the dispute is substantially linked to a matter that is before the Supreme Court.

Here, the subject of the ownership of the unit is at dispute in the BC Supreme Court. At this juncture I am unable to determine if a tenancy is in place as the Respondent asserts, they have an ownership interest in the residential property that exceeds that of a tenancy. I have no jurisdiction in this matter until the question of ownership is resolved in the Supreme Court.

The Respondent here filed their Notice of Civil Claim in the BC Supreme Court on January 12, 2023, after to the Applicants issuing the One-Month Notice on October 28, 2022. The Applicants then filed this Residential Tenancy Branch Application on January 4, 2023. Until such time as the matter is resolved in the BC Supreme Court, I have no jurisdiction to hear this Application.

The *Act* s. 55 provides that I must grant a landlord an order of possession if a notice to end tenancy complies with form and content requirements, and I dismiss the Application for an order of possession. With no jurisdiction in this matter, I cannot issue an order of possession to the Applicants despite these provisions. The landlord/tenant relationship is not established in this matter and the *Act* exclusively applies to a tenancy.

Conclusion

Having declined jurisdiction to hear this matter, I dismiss the Application for Dispute Resolution in its entirety, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Residential Tenancy Act*.

Dated: May 2, 2023

Residential Tenancy Branch