

DECISION

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear repeated applications.

The Tenant's August 30, 2024 Application for Dispute Resolution under the Act is for:

- An Order to restrict or suspend the Landlord's right of entry, under section 70;
- An Order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act;
- An authorization to recover the filing fee for this application, under section 72.

The Tenant's August 31, 2024 Application for Dispute Resolution under the Act is for:

- An Order to restrict or suspend the Landlord's right of entry, under section 70;
- An Order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act;
- An authorization to recover the filing fee for this application, under section 72.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord acknowledges service of the Proceeding Package and is duly served in accordance with the Act.

Preliminary Matters

Jurisdictional issues

The crux of this dispute revolves around disagreements between the two co-owners of the rental unit: SW2 and JW. This is a familial dispute; SW2 and JW are amid divorce proceedings.

SW was permitted to occupy the rental unit since November 2022 and was paying rent. Both sides were under the impression that there was a tenancy agreement, however, the nature of this contract has been called into question during the hearing as JW and

Tenant SW have confirmed that JW sometimes resides in the rental unit. As per section 4(c) of the Act, a living accommodation in which the tenant shares a bathroom or kitchen facilities with the owner of that accommodation is excluded from the Act.

JW and SW2 have differing ideas on how they want the occupancy of the rental unit to manifest, including the collection of rent and access to the rental unit. The ownership of the rental unit is at issue in their divorce proceedings. Section 58(2)(d) of the Act indicates that the Director must not determine a dispute if the dispute is linked substantially to a matter that is before the Supreme Court. This is consistent with the information found in *Policy Guideline #27 – Jurisdiction*.

Based on the evidence and submissions before me, I am not satisfied that I have jurisdiction under the Residential Tenancy Act to hear the dispute between the parties as there is an active civil dispute over ownership of the rental unit in a superior court which is substantially linked to the issues before me. I also decline jurisdiction because the living circumstances at the rental unit, which involves occupancy by one of the owners, are excluded from the Act.

Conclusion

I decline jurisdiction over the matters before me and make no findings on any of the merits or arguments presented by either party.

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

Dated: October 8, 2024

Residential Tenancy Branch