



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Dispute Codes: OPR, MNRL, FFL, CNR, MNDCT, OLC, FFT

Introduction

The parties (at least one party, anyway) seek various under the *Residential Tenancy Act* (the “Act”).

This decision deals with the preliminary issue of whether the Residential Tenancy Branch, and in my capacity as an arbitrator with delegated authority under section 9.1 of the Act, has jurisdiction to consider the dispute.

Jurisdiction

One party (B.) filed an application to dispute a notice to end tenancy for unpaid rent, along with additional compensatory relief sought.

Notwithstanding having made the application, B. argues that there is no tenancy, that they are not a tenant, and that there are ongoing proceedings in the Supreme Court of British Columbia that are substantially linked to the dispute between the parties. Party B. argues that the Residential Tenancy Branch cannot determine the dispute because of that linkage.

The other party (T.) filed an application for an order of possession (based on the notice to end tenancy for unpaid rent) and for compensation for unpaid rent. T. argues that there is a tenancy, that B. has not paid rent in 15 months, and that there is no substantial link between this dispute and anything occurring at the Supreme Court.

Sections 58(2) and 58(2)(d) of the Act state that the director (meaning the Residential Tenancy Branch and any arbitrator appointed, or having delegated authority, under the Act) must not determine a dispute if “the dispute is linked substantially to a matter that is before the Supreme Court.”

An underlying matter previously before the Residential Tenancy Branch related to whether B. had beneficial interest in the property (thus making them a landlord or owner, and not a tenant). A previous arbitrator found (in a decision dated August 15, 2022) that the issue of whether B. had a beneficial interest in the property was, at that time, before the courts. He determined that he was without jurisdiction to resolve the dispute.

However, the facts upon which the previous arbitrator made his decision have since changed. On October 21, 2022 the Honourable Madam Justice Ross ordered that B.'s application for beneficial interest in the property be dismissed. A copy of the judge's order was before me.

That having been said, there are at least three active proceedings before the Supreme Court. Two are of the family matter-type proceedings and one is of a civil litigation-type matter. One of the family matter files is scheduled for trial in February 2024 and the civil litigation trial is scheduled for March 2024. B. explained that the family matter involves his soon-to-be ex-wife's claim against the property as a marital asset. I have before me a copy of the court's Notice of Trial. Despite T.'s assistant's argument that the family matters are linked to the previously-dismissed order regarding beneficial interest, there is nothing before me to conclude that this family matter, and the civil litigation file for that matter, are not proceeding before the court. Nor is there sufficient evidence for me to find that the disputes about the property itself—which appears to be forefront in the proceedings—are anything but substantially linked to matters that are before the Supreme Court.

For these reasons it is my finding that the parties' disputes are linked substantially to matters that are presently before the Supreme Court. And for this reason, it is my decision to decline jurisdiction.

This decision is made on delegated authority under section 9.1(1) of the Act. A party may appeal this decision under section 79 of the Act, or, by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: March 31, 2023