COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Sefcikova v. Orca Realty Inc.,* 2024 BCCA 328

Date: 20240912
Docket: CA49883

Between:

Gabriela Sefcikova and Kamil Sefcik

Appellants
(Plaintiffs)

And

Orca Realty Inc. and Sandra Bayliss

Respondents
(Defendants)

Before: The Honourable Mr. Justice Groberman
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated April 26, 2024 (*Sefcikova v. Orca Realty Inc.*, 2024 BCSC 697, Vancouver Docket S226358).

Oral Reasons for Judgment

Appearing in person on behalf of the Appellants:	K. Sefcik
Counsel for the Respondents:	C. Gray
Counsel for the Director of the Residential Tenancy Branch:	R.L. Shaw J.M. Patrick (via videoconference)
Place and Date of Hearing:	Vancouver, British Columbia September 12, 2024
Place and Date of Judgment:	Vancouver, British Columbia September 12, 2024

Summary:

The Director of the Residential Tenancy Branch applies for leave to intervene on an appeal from a judgment dismissing a damages claim by tenants against their former landlord. The Director wishes to assert that the procedures followed in the court below were improper, and that the court ought not to have assumed jurisdiction without the Director having been served. Further, the court ought to have considered whether the matter would better be heard by the Director, given the expertise and administrative efficiency in the Residential Tenancy Branch. Held: Application granted, with directions. The arguments that the Director wishes to make are not properly the subject of an intervention, since they are directed entirely to an issue that the parties do not raise on the appeal. The Director ought to have brought his own appeal, though he might have faced some opposition, given that he was not made a party to the proceedings below. It would be inefficient, at this point, to require the Director to commence a new appeal, and the issues he raises are of some importance. Accordingly, he is given leave to file a factum, to be styled "Intervener's Factum". It will be up to the panel hearing the appeal to decide whether or not to hear the Director's arguments, and also to decide whether procedural orders are necessary to regularize the appeal (including, perhaps, an order making the Director an appellant rather than an intervener).

[1] **GROBERMAN J.A.**: This is an application by the Director of the Residential Tenancy Branch for leave to intervene in an appeal.

[2] For reasons that follow, it is my view that the application is misconceived; it appears that what the Director really wishes to do is appeal the decision made by the judge below, rather than fulfil the role of an intervener. I accept that, because the Director was not named as a party to the proceedings below, he may have faced challenges in commencing his own appeal. Nonetheless, it is my view that the Director would have had standing to appeal, and ought, properly, to have applied to this Court for an extension of time to do so.

[3] The issues raised by the Director are of sufficient substance that the panel hearing the existing appeal ought to be apprised of them. While the application to intervene is misconceived, I am, in the interests of efficiency, prepared to allow the Director to file a brief factum styled as an intervener's factum. It will be up to the panel hearing the appeal to decide whether to hear the arguments raised by the Director, and to make any procedural orders necessary to regularize the appeal proceedings.

Background

[4] The respondent Sandra Bayliss was one of the landlords of rented residential premises occupied by the appellants as tenants. The landlords engaged the respondent Orca Realty to manage the property.

[5] Ms. Bayliss signed a two-month notice to end the tenancy in November 2021, and Orca Realty served it on the tenants. The ground for the termination was that the landlord required the premises for her own use. Such a termination was governed by s. 49(3) of the *Residential Tenancy Act*, S.B.C. 2002, c. 78. Section 51(2) of the *Act* provides that if the stated purpose of ending the tenancy is not accomplished within a reasonable time, the landlord is required to pay the tenant 12 times the monthly rent that was payable under the tenancy agreement. The tenants contend that the landlord did not occupy the premises within a reasonable time after serving the notice.

[6] Claims arising under s. 51(2) of the statute are generally within the exclusive jurisdiction of the Director, pursuant to s. 58(1) of the *Act*. The Director, however, is not permitted to resolve claims that exceed monetary limits set out in s. 58(2) of the statute. In respect of such disputes, s. 58(4) of the statute provides for an application to be made to the Supreme Court. A court hearing such an application may either hear the dispute or refer it to the Director for determination.

[7] In this case, the tenants amalgamated a claim for statutory damages under s. 51(2) with a claim for other compensation that exceeded the small claims limit. The question of whether such a claim is within the jurisdiction of the Supreme Court (and, if so, whether it should nonetheless be referred to the Director for resolution) is a matter that is to be determined on an application to the Supreme Court. Such an application is an originating application and should be commenced by petition. The procedure is discussed in some detail in *Gates v. Sahota*, 2018 BCCA 375, which does not appear to have been brought to the attention of the chambers judge.

[8] The tenants brought their claim by Notice of Civil Claim and did not make the application that appears to be required under s. 58(4) of the statute. The Director

was not given notice of the claim. He says that had the claim been brought properly, by application under the *Act*, he would have been served with the petition, and would have had standing to address it.

[9] The judge hearing the claim considered that she had jurisdiction to hear it. She was not directed to the requirement that the matter be resolved on an application (i.e. a petition), nor did she comment on the fact that the Director had not been served with notice. She dismissed the tenants' claim, and they have appealed.

[10] The Director applies to intervene on the appeal. He wishes to argue that the procedures followed were improper, that he ought to have been given notice, and that expertise and administrative consistency ought to have been factors considered by the court in deciding whether to hear the matter or refer it to the Director.

[11] The appellants object to the intervention, primarily on technical grounds related to the application to intervene. In my view, those grounds are not of sufficient gravity to be factors on this application.

Analysis

[12] In my opinion, the Director's application is misconceived. The role of an intervener is to present legal arguments on issues raised by the parties on an appeal, not to raise entirely new issues that the parties have not chosen to raise.

[13] Here, the Director raises important issues of principle. He says that his office is directly affected by the order below, and ought to have had an opportunity to address the matter.

[14] If the Director's interpretation of the statute is correct, then he ought to have been served with an application under s. 58(4) of the *Act* and would have had a right to make submissions to the court on the jurisdictional issues.

[15] The Director wishes to argue that the decision of the court below was tainted by procedural errors not raised by the parties. The proper approach would have been for him to appeal the order. I acknowledge that, as he was not named as a

party to the proceedings below, his standing to appeal might have been challenged. In my view he would have prevailed on any such challenge. As an aggrieved party who was required to be (but was not) given notice of the proceedings he had a right to ask the court below to reconsider its order or to ask this court to correct any error in it. It is likely that he would have had to apply for an extension of time to appeal, because he did not have timely notice of the judge's order.

[16] Unfortunately, dismissing this application and sending the Director away to apply for an extension of time to appeal would be very inefficient, and might result in a multiplicity of proceedings, given that the existing appeal is, as I understand it, now well along.

[17] In the interests of efficiency, I am granting the Director leave to file an eight-page factum, to be styled "Intervener's Factum". It is to be filed and served by October 11, 2024. The appellant and respondent, should they choose to do so, will each have leave to file a six-page factum in response to the "Intervener's factum" within three weeks of receipt of the Director's factum.

[18] I will leave it up to the panel hearing the appeal to decide whether to consider the Director's arguments, and whether any orders are necessary to regularize the appeal proceedings, including whether the Director should be made an appellant rather than an intervener.

[19] I am directing that the parties and the Director draw the Court's attention to these reasons on the hearing of the appeal.

"The Honourable Mr. Justice Groberman"