

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Robinson v 700 Bidwell Limited
Partnership,*
2026 BCSC 1934

Date: 20261007
Docket: S252951
Registry: Vancouver

Between:

Edward Andrew Robinson and Smokey's Club Holdings

Plaintiffs

And

**700 Bidwell Limited Partnership, Westbank Living Corp, Peter Campion,
Jaclyn Sakaguchi and Terra Park**

Defendants

Before: The Honourable Justice Tucker

Reasons for Judgment

The Plaintiff, appearing in person and as
representative for the Plaintiff Company:

E. Robinson

Counsel for the Defendants:

G. Headley (hearing only)
N. Preshaw (August 7, 2026
submissions only)

Written Submissions by the Residential
Tenancy Branch received:

July 14, 2026

Written Submissions by the Defendants
received:

August 7, 2026

Place and Date of Judgment:

Vancouver, B.C.
October 7, 2026

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I. Introduction

[1] The defendants 700 Bidwell Limited Partnership (“Bidwell”), Peter Campion, Jaclyn Sakaguchi, and Terra Park (the “Defendants”) apply, in the alternative, for orders striking, dismissing, or remitting the claims advanced under the amended notice of civil claim (the “AN OCC”) filed by Edward Andrew Robinson and Smokey’s Club Holdings (collectively, the “Plaintiff”).

[2] The original notice of civil claim (the “NOCC”) was filed on April 16, 2025. The AN OCC was filed on April 2, 2026. The Defendants filed a joint response to civil claim (“RCC”) on May 7, 2025.

[3] The style of cause purports to name Westbank Living Corp. as a further defendant. The Plaintiff has not provided evidence (nor even claimed) that any such entity was served. The Defendants’ have adduced evidence that corporate searches done by their counsel disclose no such British Columbia entity. That evidence was not disputed by the Plaintiff. Accordingly, the purported action against Westbank Living Corp. is struck in any event of the Defendant’s application.

[4] The Defendants’ seek to have the AN OCC struck under R 9-5(1) of the *Supreme Court Civil Rules* [Rules], dismissed under R 9-6 of the Rules, or remitted to the Residential Tenancy Board (“RTB”), under s. 58(4) of the *Residential Tenancy Act*, SBC 2002, c 78 [RTA], for resolution as a landlord-tenant dispute.

[5] For the reasons set out below, the application for remittal to the RTB for determination by the RTB’s director (the “Director”) is granted.

II. Background

[6] Bidwell is a limited partnership and the owner of a multi-unit residential building on Alberni Street (the “Building”). The Building contains a specific rental unit (the “Property”) tenanted by the Plaintiff.

[7] As for the personal Defendants, Mr. Campion formerly acted as a property management agent for Bidwell in relation to the Building. Ms. Park presently acts in that capacity.

[8] Ms. Sakaguchi formerly resided in the Property as a roommate with the Plaintiff, however, the Plaintiff confirmed at the hearing that Ms. Sakaguchi is named as a defendant solely in an alleged capacity as an agent for Bidwell (and *not* in her capacity as a former co-tenant). Ms. Sakaguchi apparently had an association with Bidwell at some point, possibly as an employee.

[9] In February 2022, a residential tenancy agreement (“Agreement”) for the Property was entered between Bidwell, as landlord, and Ms. Sakaguchi and Mr. Robinson/ Smokey’s Club Holdings, as co-tenants.

[10] Neither the pleadings nor the evidence explain why the Agreement was signed on behalf of Smokey’s Club Holdings as well as by Mr. Robinson in his personal capacity. No party to this application attributed any factual or legal significance to Smokey’s Club Holdings having been included as a party to the Agreement.

[11] The Agreement was for a fixed term – March 1, 2022 to August 31, 2022 – following which the lease terms converted to a month-to-month tenancy. The Agreement makes the total monthly rent payable for the Property the sum of \$2,950.

[12] On January 9, 2025, Ms. Sakaguchi made a report to Bidwell that the Plaintiff was misusing the Property and breaching the Agreement. In response to her report, Bidwell had the Property inspected. On receipt of the inspection report, Bidwell was satisfied there was evidence of smoking, cannabis use, improper storage, and property damage contrary to the Agreement.

[13] On March 25, 2025, Bidwell notified the Plaintiff and Ms. Sakaguchi that there were material breaches of the Agreement outstanding and gave them seven days notice to rectify a list of specified issues.

[14] On March 28, 2025, the Plaintiff wrote Bidwell disputing there had been any breach of the Agreement.

Non-payment of Rent & the April 10, 2025 Notice

[15] Bidwell was not paid rent for the Property for the month of April 2025.

[16] On April 4, 2025, Bidwell gave the Plaintiff and Ms. Sakaguchi notice that the rent must be paid by April 8, 2025. The April 2025 rent was never paid.

[17] On April 10, 2025, Ms. Park provided notice under *RTA* to end the tenancy established by the Agreement (“Notice”) based on failure to pay rent.

[18] Section 46 of the *RTA* includes the following:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

...

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

[19] On April 28, 2025, Ms. Sakaguchi wrote Bidwell terminating her tenancy of the Property.

[20] The Plaintiff continued, and presently continues, to reside in the Property following the Notice. The Plaintiff has not paid rent for the period following March 2026.

The NOCC

[21] On April 16, 2025, the Plaintiff filed the NOCC. Along with interest and costs, the NOCC sought the following:

- a. General damages for discomfort, distress, and diminished enjoyment of the premises;
- b. Special damages for any costs or expenses incurred due to the condition of the unit or wrongful eviction process;
- c. An order requiring the Defendants to promptly remedy the defects outlined in [the NOCC];
- d. A declaration that the [Notice] was issued in bad faith or was otherwise invalid;
- e. Aggravated and/or punitive damages against Defendant Jaclyn Sakaguchi for misuse of authority and abuse of process[.]

[22] Part 3 of the NOCC set out the following as the legal basis for the relief sought:

1. The Defendant has breached its statutory and common law obligations to the Plaintiff by failing to maintain the residential premises in a condition that is safe, habitable, and in good repair.
2. Pursuant to section 32 of the *Residential Tenancy Act*, SBC 2002, c. 78, the Defendant is required to ensure that the rental unit and common areas meet housing, safety, and health standards required by law. The Defendant has failed to meet these obligations by allowing persistent mold, structural disrepair, and unsafe conditions to continue despite notice.
3. The Defendant has also interfered with the Plaintiffs right to quiet enjoyment of the rental unit, contrary to section 28 of the *Residential Tenancy Act*, by failing to address ongoing issues that materially affect the Plaintiff's health, safety, and use of the premises.
4. The presence of mold and water damage may constitute a health hazard under the *Public Health Act*, SBC 2008, c. 28, and the associated regulations. The Defendant has failed to take reasonable steps to remedy known health-related risks that threaten the Plaintiff's well-being.
5. Under the *Occupiers Liability Act*, RSBC 1996, c. 337, the Defendant, as the occupier of the premises, owes a duty to take reasonable care in ensuring that the premises are safe for lawful occupants. The ongoing maintenance issues breach this duty of care.
6. The Defendant's failure to take action despite repeated notice constitutes negligence under the *Negligence Act*, RSBC 1996, c. 333, and has directly contributed to the Plaintiff's damages, including discomfort, health risks, and interference with the enjoyment of the premises.

7. Additionally, the Defendant is in violation of the City of Vancouver Standards of Maintenance Bylaw No. 5462, which requires landlords to maintain residential premises in accordance with specific structural, plumbing, drainage, and ventilation standards. These requirements have not been met.

Director's Jurisdiction under the RTA

[23] Section 84.1 of the *RTA* gives the Director the exclusive jurisdiction to inquire into, hear, and determine all matters and questions of fact, law and discretion arising or required to be determined in a dispute resolution proceeding under the *RTA* or a review proceeding under s 79 of the *RTA*.

The RCC

[24] The Defendants filed the RCC on May 7, 2025, along with a jurisdictional response. The RCC asserts that the NOCC fails to disclose a cause of action and that the NOCC is scandalous, frivolous, vexatious, and/or constitutes an abuse of process. In both the RCC and their jurisdictional response, the Defendants submit that the subject matter of the NOCC is a matter within the Director's jurisdiction under the *RTA*.

The RTB Application

[25] At some point prior to October 19, 2025, the Plaintiff applied to the RTB under ss 46 and 55 of the *RTA*, disputing the Notice ("RTB Application"). (The RTB Application is not included in the record and the exact date of application is unknown.)

[26] On October 19, 2025, a ruling ("RTB Ruling") was issued by the assigned arbitrator (the "Arbitrator"). The Ruling indicates that the Plaintiff advised the Arbitrator that he had sent the RTB Application to Bidwell by registered mail on August 29, 2025. Assuming there was compliance with s 59 of the *RTA*, it follows that the RTB Application was filed by the Plaintiff sometime between August 26-29, 2025 (i.e., after the Defendants provided their RCC and jurisdictional response).

[27] The Defendants' evidence is that Bidwell never received a copy of the RTB Application and only learned of the RTB proceeding when it was emailed a copy of the RTB Ruling by the RTB.

The RTB Ruling

[28] The RTB Ruling includes the following:

Preliminary Matters

The Tenant provided documents from the Supreme Court of British Columbia, and argued that this matter was before that court, so the Residential Tenancy Branch does not have jurisdiction.

Under section 58 of the Act, the director must resolve disputes unless the dispute is substantially linked to a matter that is before the Supreme Court.

The Tenant provided a Notice of Civil Claim filed in the Supreme Court. This document indicates that the Tenant claims damages from the Landlord due to lack of maintenance of the rental property. The Tenant testified that they are holding their rent in trust for the Landlord and using it to pay for repairs.

I have reviewed the 10 Day Notice to End Tenancy which the Tenant applied to cancel. It indicates rent of \$11,358.04 was owing as of August 1, 2025. The Tenant testified that rent is about \$2,800.00 per month.

The Landlord did not attend this hearing.

Therefore, I find the issues identified by the tenants in their application are substantially linked to the petition that is currently before the Supreme Court. Under 58(2) I find that the Residential Tenancy Branch does not have the jurisdiction to resolve this dispute.

Based on the evidence above and the affirmed testimony of both parties, I find that I do not have jurisdiction to hear this matter regarding the Tenant's application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act.

[Emphasis added.]

(While the closing paragraph of the RTB Ruling refers to the testimony of both parties, the earlier portion of the RTB Ruling is clear that the Plaintiff was the sole participating party at the hearing.)

The Defendants' First Application

[29] On March 20, 2026, the Defendants filed an application to strike, dismiss, or remit the claims in the NOCC to the RTB ("First Application").

[30] On April 2, 2026, the Plaintiff served his application response materials on the Defendants along with a filed copy of the ANOCC.

[31] On April 8, 2026, in a hearing before Associate Judge Bilawich regarding the scheduling of the First Application, the parties agreed that the Defendants would file a new application addressing the ANOCC, and then set the new application down for hearing on May 4, 2026.

The ANOCC

[32] The factual portion of the NOCC asserted that the Plaintiff had “experienced significant and ongoing maintenance and health issues in his residential unit and common areas” due to maintenance issues including:

- a) mold in the hallway,
- b) mold around the window in the Property;
- c) condensation between the window panes;
- d) missing or failed window seals, leading to temperature and moisture issues, including increased hydro-electric costs;
- e) a damaged or malfunctioning bathroom sink;
- f) poor patio drainage resulting in water accumulation; and
- g) a year of cold water in the bathroom shower.

[33] The NOCC went on to assert (among other things) that the Defendants had refused or failed to adequately address these maintenance issues, and that this refusal or failure had caused the Plaintiff to suffer “damages, including discomfort, health risks, and interference with the enjoyment of the premises.”

[34] The amendments made by ANOCC deleted all of the assertions described in the two paragraphs above.

[35] Under Part 1 of the ANOCC, the central facts alleged were that:

7. During the tenancy, the Plaintiff was exposed to unsafe and hazardous conditions, including:
 - (a) Mold and moisture intrusion;
 - (b) Defective and improperly sealed windows;
 - (c) Inadequate ventilation and compromised air quality;
 - (d) Water ingress and drainage failures.
8. The Defendants knew or ought reasonably to have known of these conditions.

[36] The Relief Sought portion of the NOCC was entirely deleted by the ANOCC amendments. The ANOCC does not allege any loss or harm was suffered, nor seek does the ANOCC seek damages.

[37] The Legal Basis portion of ANOCC reads as follows:

Negligence

1. The Defendants owed the Plaintiff a duty of care.
2. The Defendants breached that duty by failing to maintain reasonably safe premises.
3. The Plaintiff suffered foreseeable damages.

Independent Tort

4. The Plaintiff's claims arise independently of the tenancy agreement and include negligence and breach of duty of care.

Jurisdiction

5. The Plaintiff pleads that this Court is the appropriate forum and should exercise jurisdiction.

III. The Present Application

A. Rule 9-5(1)

[38] Rule 9-5(1) provides that at any stage in the proceedings, the court may strike the whole or any part of a pleading on the grounds that:

- (a) it discloses no reasonable claim [...],
- (b) it is unnecessary, scandalous, frivolous or vexatious, or [...]
- (d) it is otherwise an abuse of the process of the court ...

[39] A claim will be struck under R 9-5(1)(a) if it is plain and obvious, assuming the facts pled to be true, that the pleading discloses no reasonable cause of action: *R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para 17. The test for striking a pleading under R 9-5(1)(b) was summarised in *Willow v. Chong*, 2013 BCSC 1083 at para 20:

Under Rule 9-5(1)(b), a pleading is unnecessary or vexatious if it does not go to establishing the plaintiff's cause of action, if it does not advance any claim known in law, where it is obvious that an action cannot succeed, or where it would serve no useful purpose and would be a waste of the court's time and public resources: ...

[40] Abuse of process under R 9-5(1)(d) is a flexible doctrine that allows the court to prevent a claim from proceeding where to do so would violate principles of judicial economy, finality and the integrity of the administration of justice: *Toronto (City) v Canadian Union of Public Employees (C.U.P.E.)*, Local 79, 2003 SCC 63 at paras 35–37.

[41] The Defendants submit that the ANOCC is expressly framed as a claim in negligence, and that the asserted facts demonstrate that the subject matter of the claim is the tenancy and Agreement. With respect to R 9-5(1)(a), the Defendants stress that the ANOCC does not seek any relief and, accordingly, does not disclose a cause of action. The Defendants further say that the ANOCC is deficient as a claim in negligence as it contains no material facts capable of establishing compensable harm. With respect to the possibility of amendments, the Defendants note that even under the considerably more informative NOCC, no material facts capable of establishing compensable harm were plead.

[42] The Defendants further say that even if the Plaintiff was given leave to amend, and even if he added facts alleging he suffered adverse health impacts as a result of the hazardous conditions alleged, his damages claim could not be anything more than nominal given that the Plaintiff has continued to reside in the Property.

[43] Finally, the Defendants argue that the Plaintiff should not be permitted any further opportunity to amend because, the Defendants submit, the Plaintiff amended

the NOCC solely to derail the First Application and that the filing of the ANOCC was itself an abuse of process in the circumstances. I reject the Defendants' allegation of abuse of process. It is not at all uncommon for one party to amend a pleading or position after reviewing the opposing side's position in response to the initial pleading. There is no basis for inferring that the *sole* reason for the filing of the ANOCC was to avoid the hearing on the First Application.

B. Rule 9-6(1)

[44] The Defendants also submit that ANOCC can be dismissed by summary trial under R 9-6. A defendant can succeed on a R 9-6 application by showing that the case pleaded by the plaintiff is unsound. Summary judgment obliges the court to consider the evidence before it on the application: *McLean v Law Society of British Columbia*, 2016 BCCA 368 at paras 35-36. A respondent to a summary judgment application is obliged to put its "best foot forward" with respect to the existence of material facts: *McLean* at para 38.

[45] The Defendants submit that in addition to the deficiencies identified in its R 9-5(1) argument, the Plaintiff has provided no evidence of any compensable personal injury.

[46] The Plaintiff filed his affidavit #1 sworn April 2, 2026. I agree with the Defendants that that affidavit is solely directed at the state of the Property and the Building. At the hearing, the Plaintiff sought leave to add his affidavits #2 (filed May 1, 2026) and #3 (filed May 4, 2026) to the application record. These affidavits were only provided to the Defendants on the cusp of the hearing. The application to add these further affidavits was denied, both because the late timing was prejudicial to the Defendants and, in any event, because they were not relevant on this application. Like affidavit #1, these additional affidavits were directed at establishing the condition of the Building and Property.

[47] The purpose of negligence as a tort is to protect against carelessly inflicted injury. The predominating element of the tort of negligence is damage suffered. There is no basis in evidence before me for with respect to establishing a claim for

personal injury. In his response argument at the hearing, the Plaintiff submitted that he could adduce evidence to show that he had suffered a personal injury. However, his assertions in this regard were vague (with respect to injury, causation and the contemplated medical evidence), and did not satisfy me that there was any realistic possibility of establishing any serious harm or injury.

C. RTA, S 58 & Remittal to the RTB

[48] I will first address a procedural issue. The order of remittal sought by the Defendants is further to s 58(4) of the RTA. The Defendants did not provide notice of this application (or of the First Application) to the Director. The issue of whether service ought to be made upon the Director did not arise for consideration during the hearing.

[49] After the hearing, it came to my attention that the Director has been determined to be, as a person whose interests may be affected by an application under s 58(4) of the RTA, entitled to notice under R 16-1(3) of the Rules: *Tan v British Columbia (Housing Management Commission)*, 2024 BCSC 842 at para 17; *Gates v. Sahota*, 2018 BCCA 375 at para 43. I then wrote to the parties identifying the service issue and directing counsel for the Defendants to serve the Director with the application and materials, and inform the Director as to the current stage of the proceedings.

[50] On July 14, 2026, the Director filed a response to application. The Director took no position on the orders sought by the Defendants. The Director did, however, provide submissions regarding the proper legal framework in order to ensure that the relevant statutory provisions and case authorities were brought to the attention of the Court. The Director also specifically advised that the RTB was content to rely on its application response as its total participation on this application, and did not seek a further oral hearing before the Court.

[51] The Defendants and Plaintiff were provided with an opportunity to respond to the Director's application response by written submission. On August 7, 2026, the Defendants provided a submission endorsing the Director's legal framework. That

endorsement is unsurprising, as the Director's application response duplicated the key authorities cited by the Defendants and which had already been argued in the hearing. The Plaintiff did not provide a reply submission.

[52] Returning to the substance of the application, s 58 of the *RTA* includes the following provisions:

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.

(2) Except as provided in subsections (2.2) and (4) (a), the director must not resolve a dispute if any of the following applies:

- (a) unless paragraph (a.1) applies, the amount claimed for debt or damages is more than the monetary limit [\$35,000] for claims under the *Small Claims Act*;
- (a.1) the amount claimed under any of the following provisions of this Act is more than \$65 000:
 - (i) section 51 (1) or (2) [tenant's compensation: section 49 notice];
 - (ii) section 51.1 [tenant's compensation: requirement to vacate];
 - (iii) section 51.3 [tenant's compensation: no right of first refusal];
 - (iv) section 51.4 [tenant's compensation: section 49.2 order];

...

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

...

(3) Except as provided in subsection (4) or (4.1), a court does not have and must not exercise any jurisdiction in respect of a matter that must be submitted to the director for dispute resolution under this Act.

(4) The Supreme Court may, on application regarding a dispute referred to in subsection (2)(a), (a.1) or (d),

- (a) order that the director resolve the dispute, or
- (b) hear and determine the dispute.

[53] In *Tan v British Columbia (Housing Management Commission)*, 2025 BCSC 49, Justice Lamb addressed an application seeking remittal under s 58(4). Notably, one of the claims advanced in *Tan* was, as is the case under the ANOCC, an allegation of negligence claim resulting in the plaintiff's suffering adverse health consequences from residing in the rental property. At para 8 of *Tan*, Lamb J. listed the following as the questions to be addressed to determine the remittal issue:

- a) are the claims made within the RTB's subject matter jurisdiction?
- b) if so, does this Court *also* have jurisdiction under one of the *RTA*, s 58(2) exceptions?
- c) if so, which is the better venue in the circumstances?

Subject Matter Jurisdiction

[54] As noted in *Tan*, the first question requires an assessment of the "essential character" of the claim advanced:

[13] Landlord/tenant disputes that fall within the RTB's jurisdiction include those arising from rights, obligations and prohibitions under the *Residential Tenancy Act* and those arising from the rights and obligations under the terms of a tenancy agreement that relate to the tenant's use and occupation of the rental unit: *Residential Tenancy Act*, s. 58(1).

...

[15] The RTB does not have exclusive jurisdiction over a claim by a tenant against a landlord where the legal basis for the claim is not the *Residential Tenancy Act* or the tenancy agreement: *Janus v. The Central Park Citizen Society*, 2019 BCCA 173 para. 29–30; *Choi [v. Westbank Projects Corp.]*, 2024 BCCA 410] at para. 13. In *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, 1995 CanLII 108, the Supreme Court of Canada said that "it is the essential character of the claim, not the legal characterization, that determine

jurisdiction where exclusive jurisdiction over some claims has been assigned to a statutory body”: *Choi* at para. 15; *Weber* at para. 52.

[16] The key question is whether the essential character of Mr. Tan’s claims against the defendant falls within the exclusive jurisdiction of the RTB, regardless of the label that is affixed to those claims: *Weber* at para. 49, 52, 67. I accept the Director’s submission that common law causes of action such as trespass or negligence that arise from the rights governed by the Residential Tenancy Act (e.g. the right of entry by the landlord) and rely on the same material facts as a claim under the Residential Tenancy Act fall within the Director’s jurisdiction. This approach recognizes the legislature’s intention to have disputes based upon rights and obligations arising from a tenancy agreement or the *Residential Tenancy Act* decided by the RTB (subject to the exceptions identified in s. 58(2)).

[17] The essential character of most of the claims pleaded in the amended notice of civil claim is a landlord/tenant issue that falls within the scope of disputes described in s. 58(1) of the *Residential Tenancy Act*, which means the claims fall within the exclusive jurisdiction of the RTB (subject to s. 58(2)). As drafted, most of the relief sought in the amended notice of civil claim arises from rights and obligations under the *Residential Tenancy Act* or the tenancy agreement. More specifically, the only material facts pleaded in support of the relief claimed in the following paragraphs of Part 2 of the amended notice of civil claim arise from the plaintiff’s rights as tenant and the defendant’s obligations as landlord: paras. 1–5, 8, 15–23, 25–28. Subject to s. 58(2) of the *Residential Tenancy Act*, these claims fall within the exclusive jurisdiction of the RTB.

[18] The claim for damages for negligence at para. 10 of Part 2 of the amended notice of civil claim is a claim that arises from the landlord/tenant relationship. The material facts alleged in support of the negligence claim arise from the landlord/tenant relationship and not a duty of care that is alleged to be independent of the landlord/tenant relationship. The true nature of the plaintiff’s claim for negligence is a claim for breach of the plaintiff’s right to quiet enjoyment, a right that arises from the tenancy agreement and the *Residential Tenancy Act*.

[Emphasis added.]

[55] I am satisfied that the essential character of the Plaintiff’s claim under the ANOCC arises from the landlord/tenant relationship and the Agreement. Notably, the duty of care alleged (ANOCC, Part 3, paras 1 and 2) is a duty to maintain the Property and Building in a safe condition.

[56] At least one respect the ANOCC appears to be directly responsive to the Defendants’ submissions under the first application. Paragraph 4 of the Legal Basis is seemingly designed to address para 18 of Lamb J.’s reasons in *Tan* (see above):

4. The Plaintiff's claims arise independently of the tenancy agreement and include negligence and breach of duty of care.

[57] While this amendment is responsive to *Tan*, it is so only as a matter of form, not in substance. Regardless of what the Plaintiff has asserted in para 4 of the Legal Basis, the alleged duty (to maintain the Building and Property to a standard that would prevent hazardous conditions such as mold and impaired air quality from developing) is fundamentally premised on the rights and obligations of the Plaintiff and Bidwell *qua* tenant and landlord. Conspicuously, the Plaintiff failed to identify, in either the ANOCC or his submissions, any alternative basis for this duty of care.

[58] As for the individual Defendants, the ANOCC indicates and the Plaintiff specifically confirmed at the hearing, the claims made against these individuals rests entirely on conduct alleged to have been taken by them as an agent for Bidwell *qua* landlord. The naming of these individuals as Defendants does not change the fact that the essential character of the claim arises from the landlord-tenant relationship.

[59] Even if one were to consider the contents of the NOCC, in addition to the contents of the ANOCC, when assessing essential character, the Plaintiff's position is not improved. The NOCC expressly raises increased hydro-electric expenses for tenants as a harm and alleges interference with quiet enjoyment of the Property as an injury.

[60] In conclusion, the subject matters of the claims under the ANOCC arise out of the landlord and tenant relationship and/or terms of the Agreement. As such, they are matters generally falling within the RTB's exclusive jurisdiction.

Whether Court Having Exceptional Jurisdiction

[61] The exceptions are set out in *RTA*, s 58(2).

[62] Section 58(2)(d) has no application here. The Defendants seek an order remitting the subject matter of the ANOCC in its entirety to the RTB. There is no linkage analysis to engage in, as there would no longer be an extant court proceeding for the RTB proceeding to be linked with.

[63] The Plaintiff relies on s 58(2)(a), asserting that his damages claim under the ANOCC could well exceed \$35,000.

[64] As already noted, as it stands the ANOCC does not seek damages *at all*. However, in his oral argument, the Plaintiff estimated his potential damages claim (presumably as raised by an amendment) as somewhere between \$85,000 and \$100,000.

[65] The Defendants say that estimated potential value is speculative and lacks any air of reality on the pleadings and evidence before me. They note that in addition to failing to allege a personal injury, the ANOCC fails to allege any form of related pecuniary loss (e.g., loss of earning capacity). They note that the Plaintiff is not even in a position to seek moving costs, as he continues to reside at the Property.

[66] The onus is on the party seeking to have the Court to take jurisdiction to establish that a s 58(2) exception applies. I find the Plaintiff has failed to discharge that onus. Further, even if amendments were permitted and evidence of the sort alluded to by the Plaintiff adduced, the Plaintiff has not satisfied me that there is any basis for concluding that s 58(2)(a) is of potential application on the basis that the claim might exceed \$35,000.

More Appropriate Venue

[67] Finally, even if the Plaintiff satisfied me he had the potential to exceed \$35,000 in damages, I would still conclude that it was appropriate for the matter to be resolved as an RTB dispute: *RTA*, s 58(4).

[68] The Plaintiff says that the RTB lacks the experience and expertise needed to adjudicate his ANOCC claim. I disagree. The Director routinely deals with building maintenance and safety issues. The Director also considers medical and health-related evidence in numerous contexts (e.g., in extending *RTA* time limits or as factual support for giving notice to end a tenancy).

[69] In *Tan*, Justice Lamb concluded that the RTB had relevant expertise to address health-related issues allegedly arises from a breach of lease terms:

[30] Mr. Tan's claims fall squarely within the RTB's expertise. Mr. Tan alleges breaches of quiet enjoyment, which he says have adversely affected his health. Issues of quiet enjoyment and other rights under the tenancy agreement and the *Residential Tenancy Act* fall within the RTB's jurisdiction: *Residential Tenancy Act*, s. 58(1). The RTB has the authority to award compensation for loss or damage and Policy Guidelines that give guidance when awarding such compensation: *Residential Tenancy Act*, s. 67; Residential Tenancy Policy Guidelines 6 and 16.

[70] As further noted by Lamb J. in *Tan* (paras 31-32), the evidentiary rules and procedures at the RTB are also more suitable for the sort of evidence that the Plaintiff describes himself as possibly able to obtain. Even if the Plaintiff had established that might have a claim exceeding \$35,000, I would still find the matters raised appropriate for resolution by the Director.

[71] I conclude that the claim under the ANOCC is, and would remain even if amended as contemplated by the Plaintiff, one that in its essential character arising out the tenancy relationship and Agreement between the Plaintiff and Bidwell. There is no point to permitting the Plaintiff to amend or adduce further evidence in an effort to address rr 9-5 and 9-6.

IV. Disposition

[72] I remit the subject matter of the claims under the ANOCC.

[73] During the hearing, I raised the fact that, in terms of remittal, the Plaintiff had seemingly worsened his position by deleting the bulk of the NOCC in drawing up the ANOCC, and whether an amendment might be permitted simply to facilitate a meaningful remittal. In response, counsel for the Defendants advised that the Defendants would be content with an order of remittal that remitted the matters raised in the ANOCC *and* NOCC to the Director for consideration. I agree that a remittal order in those terms would result in both fairness and efficiency. The remittal order will go accordingly.

[74] As the remittal addresses the entirety of the matters raised in this Court proceeding, I also order these proceedings permanently stayed.

[75] The Defendants are entitled to their costs of the proceeding.

[76] No costs are awarded for or against the Director.

“Tucker J.”