

CANADA / JUDGMENT

Trenholm v. Flannery

2025 BCSC 475

COURT

Supreme Court of British Columbia

DECIDED

25 February 2025

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2025 BCSC 475 Trenholm v. Flannery

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Trenholm v. Flannery,

2025 BCSC 475

Date: 20250225

Docket: S63047

Registry: Kamloops

Between:

Rodney Trenholm

Petitioner

And

Bryon Flannery, Tannis Erickson and Kenneth Prince

Respondents

- and -

Docket: S63048

Registry: Kamloops

Between:

Bryon M. Flannery

Claimant

And

Rodney S. Trenholm and Brianna Heron

Respondents

Before: The Honourable Madam Justice Sharma

Oral Reasons for Judgment

In Chambers

Rodney Trenholm, appearing in person:

R. Trenholm

Tannis Erickson, appearing in person:

T. Erickson

Bryon Flannery, appearing in person:

B. Flannery

Place and Date of Trial/Hearing:

Kamloops, B.C.

February 24-25, 2025

Place and Date of Judgment:

Kamloops, B.C.

February 25, 2025

- [1] THE COURT: This judgment addresses two court files which are closely related. Justice Smith previously granted an order that the two court files be brought forward any time a hearing on one arose. As I will explain further, I am going to go further and make an order that the following two actions be consolidated: Kamloops No. 63047, Trenholm v. Flannery, Erickson and Westcoast Bailiffs, and Kamloops No. 63048, Flannery v. Trenholm. Those two actions are now going to be consolidated.
- [2] This matter came before me in general chambers on February 24, 2025 (Action 63047). The respondents brought an application to dismiss both court files as against Mr. Trenholm. I am not going to be doing that today. As I explained to the parties yesterday, there was inadequate time to deal with all the issues the parties wanted to address. I also could not render a decision because not all of the relevant issues nor all of the material facts were properly before this Court.

- [3] All parties named in these proceedings are self-represented. This explains the lack of adequate legal basis and factual basis to render decisions sought by the respondents. It also explains why there have been some challenges in having the matters proceed in an orderly fashion and why there are some anomalies in the court filings. In saying that I am not being critical of these in-person litigants, but those factors do explain why I will be relying on the Court's inherent jurisdiction to control its own process to make a number of orders in relation to these matters.
- [4] Having reviewed the complete electronic and physical file, and the materials filed by the respondents and handed up to me by Mr. Trenholm, and listened to the parties' submissions, I conclude that justice and fairness require that these parties have a one-day hearing before this Court to address a number of issues that arise on the pleadings and material before me.
- [5] In order to try and ensure that one-day hearing goes ahead and the presider at that hearing is in a position to render a decision, I am going to make a series of procedural and substantive orders to hopefully accomplish that, and those will be announced at the end of this judgment. I will hear from the parties before I make certain binding orders, and as I said, in proceeding in this fashion, I rely on my inherent jurisdiction, as well as my duty to promote the speedy, efficient and just resolution of the issues between these parties, which thus far has not taken place.
- [6] As a starting point in terms of the facts, Mr. Trenholm was previously a longstanding tenant in a home apparently owned by Mr. Flannery's mother located at 870 Sumac Place in Kamloops. The home is owned by his mother, and apparently, Mr. Flannery has a power of attorney over her affairs because she now lives in a care facility. I only say "apparently" because I do not intend this summary to represent any findings about that since there is not documentary evidence, but that is what the parties believe was represented to them.
- [7] I will now set out, in chronological order, facts and events gleaned from the material filed in this Court. In doing so, I rely on the very helpful chronology of events set out in court by Justice Smith on the December 20, 2024. A copy of the transcript of those proceedings is in the physical court file, and Justice Smith started at page 15, line 20, by stating that he would, for the benefit of whoever presides over this next time, try to set out a chronology of events, and that chronology is in that transcript starting at page 15, line 28, to page 17, line 21.

Chronology

Action 63047

- [8] Mr. Trenholm filed a petition for judicial review of two Residential Tenancy Branch ("RTB") decisions on March 28, 2024. In that petition he asserted the following facts:
- a) He had been a tenant at the home since April 2014.

- b) On November 5, 2023, he was served with a one-month notice to end the tenancy for cause, and a two-month notice to end the tenancy for the landlord's use of the property.
 - c) the one-month notice alleged late rent payments, and the two-month notice alleged the landlord was going to use the home for himself or his spouse.
 - d) Mr. Trenholm challenged that decision at the RTB, and the hearing was held on February 12, 2024.
 - e) The RTB's decision from that hearing records there was a settlement and the parties agreed that the tenant would vacate premises by March 31, 2024.
 - f) For reasons unknown to this Court, despite the substance of that decision saying that the tenant had agreed to leave by March 31, 2024, the RTB also issued an order ordering Mr. Trenholm to deliver vacate possession two days after the order was served on him, and that order is dated February 14, 2024. That order should have stated he would vacate two days after being served, but no sooner than March 31, but it did not.
 - g) Mr. Trenholm said he did not get a decision of the arbitrator until March 8, 2024.
 - h) Mr. Trenholm applied on March 14, 2024, for a reconsideration, and the next day, the RTB denied that reconsideration.
 - i) In addition to the petition filed March 28, he filed a notice of application stating that on April 2, 2024, he would be seek a stay of the RTB order.
 - j) That application was supported by an affidavit of his legal advocate, in which she deposed her belief that that Mr. Trenholm received new and relevant information about the RTB decision after March 8 and that he filed a request for reconsideration on March 14, but did not upload the evidence. She deposed that he was not told he had only one day to do so. She stated that she spoke with the RTB on March 18, and was told that the new evidence would not be considered because the decision on the reconsideration had already been made.
- [9] The order for a stay was granted by Justice Smith on April 2, 2024. It stayed the RTB decision until April 15, 2024. That order also required Mr. Trenholm to give notice of the notice of application by giving the application record to Mr. Flannery, to the RTB and to the Ministry of Attorney General no later than April 9, 2024.
- [10] Although the order for the stay is stamped on April 3, 2024, as we know, orders are effective the date they are pronounced, and it was pronounced on April 2, 2024.

Action 63048

- [11] This file was commenced on April 2, 2024. Mr. Flannery filed a requisition attaching the RTB order that I described earlier. He also filed an affidavit dated April 2, 2024. In that affidavit he stated that he served Mr. Trenholm with the order of possession on March 8, 2024, at 11:00 a.m. He deposed that the RTB had refused or dismissed the application, and that Mr. Trenholm had not obeyed the RTB order and delivered vacant possession of the home.
- [12] He also filed a writ of possession that commanded a sheriff to enter the land and cause Mr. Flannery to have possession of it. That writ also stated that the sheriff could "promptly seize and sell at public auction" or and "realize the claimant's costs, fees and expenses and execution of costs, fees and expenses for executing the writ".
- [13] The only other thing in the physical court file on this matter, is an Mr. Trenholm's affidavit filed on December 11, and a copy of an order made on April 29, 2024, by Justice Morellato, which was granted in Action 63047; that order states is also applies to Action 63048.

Action 63047

- [14] On April 15, 2024, Mr. Trenholm filed a requisition seeking short leave to have an application (alleging the stay granted by Justice Smith had been ignored) heard, but short leave was not granted.
- [15] On April 23 he filed a notice of application, without notice asking the court to hold the bailiff and the bailiff's supervisor, Kenneth Prince, in contempt for disregarding Justice Smith's order. He sought a number of other orders, including seeking punitive damages, which I will not review.
- [16] An order was issued, by Justice Morellato on April 29, 2024, which included the following terms:
- a) Mr. Trenholm had leave to amend his notice of application to add the names of the bailiffs and to refile it;
 - b) those respondents should show up in court on the May 13, 2024;
 - c) Mr. Trenholm was to serve the respondents with his amended notice of application;
 - d) until this matter was resolved, his property was not to be disposed of;
 - e) the order would also apply to Action 63048.

- [17] On May 2, 2024, Mr. Trenholm amended his notice of application and it was refiled. It added the names of Tannis Erickson and Kenneth Price as respondents. It is not clear to me that the intent of Justice Morellato's order was to add them as parties, rather than to put them on notice and have them appear. In any event, he listed them as respondents. Mr. Trenholm also amended the notice of application to add a list of items that were removed from the property, and his estimation of their value.
- [18] Ms. Erickson filed a response on May 9, 2024. She stated that she had no prior knowledge of that action. She also filed an affidavit, in which she stated that she had been shown a stamped court summary sheet pertaining to the file that ordered a stay, but that she did not and still does not have any order that pertains to that court file. She deposed that she acted as a court-appointed bailiff in executing the writ of possession, and attested to her belief and opinion that there was no injunction and that did not act illegally or against a court order.
- [19] On May 10, 2024, Mr. Flannery filed an application response accompanied by his affidavit. He too said he was never served with anything on Action 63047. He admits he got a text message on April 2, 2024, at about 3:30 p.m. from Mr. Trenholm stating that he got a court order to stop the eviction. Mr. Flannery said he did not see evidence of that court order. He then returned to the property at about 5:00 p.m. He was told by Ms. Erickson that she too got that text message. The eviction was completed on April 4, 2024.
- [20] A response was filed to the original petition by the RTB on June 25, 2024, containing the record of proceedings.
- [21] Kenneth Prince had counsel. He asked for a case planning conference ("CPC") which took place before Associate Judge Keim on October 17, 2024. At that CPC, Mr. Trenholm was allowed to reset his May 2, 2024 application to November 8, 2024, but if it was not reset, the respondents could file an application to dismiss his application, and could seek orders to dispose of his property.
- [22] On November 7, 2024, Mr. Trenholm filed a requisition to have the May 2 notice of application heard on November 18, 2024. That hearing did not take place. The materials were not filed. It is not entirely clear to me what happened, but in any event, on behalf of Mr. Prince, counsel asked that Mr. Trenholm's application be returned to the list for a hearing during the week of December 9, 2024.
- [23] On December 16, 2024, Mr. Trenholm filed an application asking for leave to file his application record late and sought, again, a stay the RTB decision, and a return of a truck that was seized on December 2, 2024. He also sought to prohibit the bailiffs from any further seizures. He also sought to join the two actions. He filed two affidavits in support of that application.
- [24] Mr. Flannery filed a response and affidavit to that notice of application, as did Ms. Erickson, on December 18 and December 19, respectively.

- [25] The parties were before Justice Hori on December 13, 2024. It is not clear to me exactly what transpired at that appearance.
- [26] They were before Justice Smith on December 17 and December 20. As noted, the transcript of the proceeding before Justice Smith in December was in the court file, but it was not actually filed until January 10, 2025.
- [27] The respondents tried to get short leave for their notice of application on February 10, 2025, but that was not granted. They filed their notice of application on February 12, 2025, seeking to dismiss both actions as against Mr. Trenholm, and that application was supported by an affidavit filed February 10, 2025. That is the application that came before me.
- [28] In addition to these facts, I am told that there has been RCMP involvement in that Mr. Trenholm is under an order not to have any contact with Ms. Erickson.

Discussion

- [29] I am extremely concerned by what has happened on this file. There have been irregularities and possibly conduct contrary to a court order.
- [30] I am surprised that someone who is in the business of being a court bailiff who got a text message saying that a court order was granted to stay a proceeding would rely on there being a different court file number to continue with an eviction, without coming to court and checking whether a stay had actually been granted. It may be that is not what happened, or that there is more to that sequence of events, but the possibility that is what occurred concerns me a great deal.
- [31] I am also concerned that Mr. Flannery, in filing the order from the RTB, stated that he served Mr. Trenholm on March 8, 2024, the order of possession. He could not have done that, since the order of possession was not issued by this Court until April 2, 2024. He must have served Mr. Trenholm with the RTB order, but that problem was that should not have happened until after March 31, 2024, when the tenancy ended.
- [32] I appreciate these parties are all representing themselves, and that the court process is a difficult one to navigate. However, these two things cause me to believe that there is an argument that what happened to Mr. Trenholm's belongings may possibly have been done without any legal authority. It may be that there was appropriate legal authority. It may be that everything that was done was done correctly. Or, it may be that regardless, nothing can be done about it now, but this matter has to be heard and that has to be addressed before anything is dismissed.
- [33] I do not know why the RTB order is worded the way it is without reference to the tenancy being in place until March 31. I accept that Mr. Flannery got the RTB order, and reading it, without the benefit of legal advice, acted on it without knowing the underlying complication of it being worded with a significant omission.

- [34] That wording in the RTB order concerns me. I would like counsel for the Attorney General to give the Court an explanation why it is done like that, and to consider if the RTB would consider a change in its practice. The way the RTB order is worded is potentially deceiving to people, including to the court registry. The court registry had no ability to know when it was presented with Mr. Flannery's material that there was anything amiss, and I am not suggesting that Mr. Flannery knew there was anything wrong. But based on what was presented, it made it seemed like Mr. Trenholm had been ignoring an RTB order to deliver vacant possession when he had no obligation to do so before April 1, 2024. So, when I say I am concerned, I am concerned by what happened, and I am not finding that Mr Flannery intended to do anything wrong.
- [35] Ms. Erickson, I understand when you tell me that you were presented with a court file number and a court summary sheet that you had no confidence about whether a stay had actually been granted, but what I did not see in the documents filed that it incumbent on you to double check the existence of that stay. It may be that is stated in some document, and I did not see it. However, you are in the business of being a court bailiff, and if you are removing somebody's belongings from their house, and they show you a court summary sheet, at the very least you double check with the Court that day or immediately the next day. The fact that it was a different court file number should not have given you any confidence that a stay was not granted. You need to look more carefully because Justice Smith did stay the order of possession and it does not matter that he did so on a file with a different court file number.
- [36] Mr. Trenholm, you have not been diligent about getting these matters to court, and you have not been diligent about serving the other parties. You cannot come to court and expect relief when the other side does not know what is happening. Now, it might be appropriate for you to seek a stay without notice; that was probably not problematic. However, you were ordered to serve the parties, and they say they were not served. I have no idea what the actual facts are about service because each of you claim not to have received documents you were supposed to receive. I have no idea and no ability now to get to the truth about that, but I hope to fix that going forward.
- [37] I am going to deal with the truck today, and I am going to allow you to make some submissions on that, Ms. Erickson.

[SUBMISSIONS REGARDING THE TRUCK.]

- [38] THE COURT: The write of possession that was filed on April 2, 2024, stated the bailiff could promptly seize and sell belongings at public auction. In December, because of increasing amounting costs for storing Mr. Trenholm's belongings that were being incurred, which I am told are quite significant, Ms. Erickson became aware that Mr. Trenholm had possession of a truck. She submits that based on the order of possession filed in April, she could seize that truck. I am finding there was no legal authority to do since seizure it supposed to be "prompt". I am ordering that truck be returned today, no later than 6:00 p.m.

[SUBMISSIONS ABOUT RETURNING TRUCK , NOTICE, THE PARTIES' ENSURING THEY HAVE ALL MATERIAL IN THE COURT FILE AND ABOUT PROCEDURAL MATTERS]

- [39] At the hearing I heard submissions from the parties, as well as, at my invitation, from counsel for Mr. Prince (David Brownell) who happened to be in the courtroom on a watching brief, but also because he is counsel on the matter that was going to be heard after this matter concluded.
- [40] Given my concerns about how the RTB order was worded, I give leave to the Ministry of Attorney General to provide an explanation for that wording by way of letter or affidavit, and if the Ministry chooses to do that, I would ask that letter or affidavit be filed with the Court by March 7, 2025, and a copy sent to each party. I thank Mr. Brownell for kindly agreeing to inform counsel for the Attorney General of my concerns about the RTB order, and advise them of my granting the Ministry leave to provide an explanation.
- [41] After back-and-forth submissions and discussions, I made the following orders:
- a) Kenneth Prince is removed as a party and from the notice of application seeking declaration of contempt;
 - b) Actions No. 63047 and 63048 are consolidated together;
 - c) The following are set for a one-day hearing on March 14, 2025:
 - i. The notice of application filed February 12, 2025, by Ms. Erickson;
 - ii. The amended notice of application filed May 2, 2024, by Mr. Trenholm; and,
 - iii. The petition filed by Mr. Trenholm.
 - d) Mr. Trenholm's truck that was seized on December 2, 2024, is to be returned to him no later than 9:00 p.m. on February 25, 2025.
 - e) Each party has leave to file one additional affidavit no later than March 5, 2024, but it should only contain new facts or documents that have not already been included in previous affidavits.
 - f) Any new affidavit filed must be delivered to the other parties no later than March 7, 2025, and delivery shall be by email without commentary.
 - g) No other pleadings can be filed before March 14, 2025.

"Sharma J."

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