



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

OPR, MNR, MNDC, FF

### Introduction

This hearing was convened in response to the Applicant's Application for Dispute Resolution, in which the Applicant has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Respondent for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing, although the male Respondent was not in attendance. The Applicant stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the male Respondent via registered mail at the service address noted on the Application, on August 09, 2010. The Applicant submitted documentation from Canada Post which corroborates this statement. These documents are deemed to have been served on the male Respondent in accordance with section 89 of the *Residential Tenancy Act (Act)*, and the hearing proceeded in the absence of the male Respondent.

The Applicant stated that she served a package of evidence to the Respondent s on September 15, 2010, which included a copy of a lease agreement. The Respondent acknowledged receiving this evidence from the Applicant. As this evidence was served on the Respondent in accordance with rule 3.5 of the Residential Tenancy Branch Rules of Procedure, I accept the evidence that was submitted by the Applicant.

The Respondent stated that she submitted a package of evidence to the Residential Tenancy Branch on September 15, 2010. She stated that she did not serve this evidence on the Applicant. As this evidence was not served on the Applicant in accordance with rule 4.2 of the Residential Tenancy Branch Rules of Procedure, I decline to accept the evidence that was submitted by the Respondent.

### Preliminary Matter

At the outset of the hearing the Tenant and the Applicant agreed that they entered into a fixed term tenancy agreement that began on October 31, 2009 and is to end on October 31, 2011, for which the Respondents are required to pay monthly rent of \$3,650.00 on

the first day of each month. A copy of this lease agreement was submitted in evidence by the Applicant.

**At the outset of the hearing the Respondent and the Applicant agreed that the parties also entered into an agreement regarding the purchase of this rental unit, a copy of which has not been accepted as evidence. The parties agreed that the purchase option provides the Respondents with the right to purchase the rental unit for \$695,750.00 providing they comply with the terms of the tenancy agreement. The parties agreed that the Respondents paid a deposit of \$20,000.00, \$2,500.00 of which was paid to the realty company who brokered the purchase option.**

The parties were advised that I must determine whether I have jurisdiction in this matter before considering the merits of the Landlord's application. Both parties were directed to submit a copy of the one page **purchase option** to the Residential Tenancy Branch prior to October 08, 2010. The parties were advised that the hearing would be reconvened after October 08, 2010 if I determined that I had jurisdiction in the matter.

**The Applicant submitted a copy of the document on XXXX and the Respondent a copy of the document on XXXX. The document says:::**

Residential tenancy legislation does not confer authority to consider disputes between all types of relationships between parties. Only relationships between landlords and tenants can be determined under the *Act*. Even if the parties enter into an agreement that they term a tenancy agreement, the agreement it is not necessarily a contract that can be determined under this legislation. Jurisdiction can be refused if the contract grants one party an interest in the property that goes beyond exclusive possession and occupation of the rental unit. If the contract gives the other party an interest in the land beyond possession then jurisdiction must be refused.

I find that the **purchase option** signed by the parties on **XXXX** transferred an interest in the land which goes beyond the relationship of a landlord and tenant. The contract immediately granted the **"tenant" an interest in the equity of the property which could be exercised at any time. The Applicant described this aspect of the contract as a "call option" on the equity of the property but submitted that the relationship was otherwise a landlord and tenant relationship.**

**I disagree. The purchaser's right to the equity which could have been exercised at anytime during the term of the contract granted the purchaser an interest in the property beyond the scope of the *Residential Tenancy Act*. As a result, I decline to accept the landlord's application as his claim has no jurisdiction under the *Act*.**

### Conclusion

I dismiss the Applicant's application. The Applicant's claim does not fall under the *Residential Tenancy Act* as the other party had an interest in the property beyond that

of a tenant. The Applicant has the option of pursuing her claim through the Supreme Court of British Columbia.

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

Dated: October 18, 2010.

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Dispute Resolution Officer