



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlord: OPR, OPL, MNR, MND and FF  
Tenant: CNR, OPT, MNDC, RPP, LRE and FF

### Introduction

These applications were brought by both the landlord and the tenant.

By application of October 24, 2011, the landlord seeks an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent dated October 3, 2011, and an order for landlord use, and a Monetary Order for unpaid rent, damage to the rental unit and recovery of the filing fee for this proceeding.

By application of October 24, 2011, the tenant seeks to have the notice for unpaid rent set aside, an Order of Possession for the tenant, a monetary award for damage or loss, return of personal property and restriction on the landlord's right to enter the rental unit.

This tenancy is co-mingled with a family dispute given that the landlord's son, the primary tenant, is an estranged spouse of the tenant and father of one of her children. The rental agreement, dated September 1, 2007, is a briefly written two paragraph contract between the landlord and his son that states the tenancy is created to house the tenant and her three children at \$2,600 per month.

At the commencement of the tenancy, the tenant advised that her legal counsel has filed a common law trust claim with the Family Court of British Columbia. The landlord's agent, who is among the respondents on that claim, acknowledged that she has been served with notice of it.

On hearing of that court proceeding, I advised the parties that it might be necessary to defer the present applications to the court given that there is an apparent contest over the rights to the property.

The landlord's representative submitted a Land Title Act filing date stamped August 16, 2011 showing that she had taken a mortgage from the landlord in exchange for \$250,000 at no interest. She also submitted a municipal tax bill showing that the named landlord is the owner of the property.

The landlord's agent submitted that this documentation clearly shows that the applicant landlord is owner of the property and entitled to have the present claim heard.

The tenant makes claim that is a part owner of the property who has paid a substantial amount toward it and questioned the virtue of the landlord's documents.

While both parties stated they have legal counsel, neither was so represented at the hearing.

I find that there is sufficient question regarding rights to the property that I must defer to the present application before the Family Court and the potential for a Supreme Court referral by the Family Court.

Therefore, I dismiss both applications with leave to reapply when pending direction of the court(s).

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: November 16, 2011.

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Residential Tenancy Branch