



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      O and FF

### Introduction

This application was brought by the tenant on November 4, 2011 seeking remedies to an alleged breach of a rental agreement under which the tenant claims he was granted five years free rent in exchange for construction of a basement suite.

As a matter of note, the present application names the upstairs tenant as respondent.

The same claim was addressed in a hearing conducted on June 21, 2011 which named the building owner as respondent. In her Decision of June 30, 2011, the Dispute Resolution Officer (DRO) declined jurisdiction on the grounds that there was no written tenancy agreement or other evidence to prove that a tenancy agreement existed between the applicant and the landlord.

The DRO further found that the agreement in question was more in the nature of a contract for services than it was a tenancy agreement. Therefore, she declined jurisdiction and referred the parties to seek “an appropriate legal remedy.”

The applicant subsequently applied for Judicial Review of that decision before the Supreme Court of British Columbia with the result that, by Order dated November 1, 2011, the Honourable Mr. Justice Sewell dismissed the petition.

As in the previous hearing, given similar or identical circumstances, the present application would require preliminary consideration of whether this matter falls within the jurisdiction of the *Residential Tenancy Act*.

Preliminary Matters:

At the commencement of the hearing, the applicant/tenant asked whether he would be permitted to record the proceedings. I advised that item 9.1 under the Rules of Procedure prohibits the recording of proceedings. Counsel for the respondent noted that recording is possible, with consent, under Rule 9.2 provided the party making the requests makes and pays for all arrangements and provides copies to all parties as directed.

The tenant then requested that the hearing be adjourned to a face-to-face hearing to provide him with an opportunity to consult legal counsel.

Legal counsel for the respondent objected to an adjournment on the grounds the tenancy in questions has been dragging on for over two years with unresolved matters in dispute. I denied the adjournment on the grounds that the applicant is familiar with dispute resolution proceedings having recently participated in the previously noted hearing and because the administrative hearing is designed to be fully accessible by lay participants without counsel. In addition, the matters at issue were fully addressed in the previous hearing and Judicial Review.

The tenant then stated his wish to withdraw the application. Legal counsel for the respondent asked to record her claimed right to argue that the application was withdrawn with prejudice.

Conclusion

The application is withdrawn

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 23, 2011.

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Residential Tenancy Branch