



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNR, CNL, CNC, FF

### Introduction

This hearing was set to deal with an application by the tenant for orders setting aside a variety of notices to end tenancy. Both parties appeared and had an opportunity to be heard.

### Issue(s) to be Decided

Does the Residential Tenancy Branch have jurisdiction over this dispute?

### Background and Evidence

The respondent is the son and beneficiary of DE. He is also the executor of his father's estate. According to the material filed by the applicant, DE died on January 31, 2014.

The applicant lived in the same residence as the deceased for over eight years. She continues to reside in that residence.

The respondent has served the applicant with a 1 Month Notice to End Tenancy for Cause dated February 7, 2014; a 2 Month Notice to End Tenancy for Landlord's Use dated March 1, 2014; and 10 Day Notice to End Tenancy for Non-Payment of Rent dated March 4.

The applicant's position is that there was not a tenancy agreement between herself and the deceased but a spousal relationship. The applicant's lawyer filed a copy of a Notice of Civil Claim against the estate of DE, and the executor and beneficiaries of that estate, which claims that the applicant has an interest in the property as a result of a spousal relationship that existed between the applicant and the deceased, and which asks for an order under the *Wills Variation Act*. According to the applicant, her lawyer advises that the claim is about to be filed in Supreme Court. The lawyer also filed a copy of the Certificate of Lis Pendens that was registered against the property on March 7, 2014.

The respondent's position is that the applicant paid his father rent for the bedroom she occupied and that therefore she is a tenant and the Residential Tenancy Branch does

have jurisdiction over this dispute. The applicant's position is that any payment made by her to the deceased was part of a larger financial arrangement made within the spousal relationship.

#### Analysis

Section 58(2) of the *Residential Tenancy Act* states provides that if the Residential Tenancy Branch receives an application for dispute resolution an arbitrator must determine the dispute unless the dispute is linked substantially to a matter that is before the Supreme Court. Subsection (4) gives the Supreme Court the authority to make any decision that an arbitrator may make under the *Act*.

I find that this dispute, which is about whether a spousal relationship existed between the applicant and the deceased and whether the applicant has any claim to the estate of the deceased, both of which are outside the jurisdiction of the Residential Tenancy Branch, is substantially linked to a matter that is before the Supreme Court and therefore the Residential Tenancy Branch does not have jurisdiction over this dispute. If the Supreme Court determines that the relationship between the applicant and the deceased was a landlord and tenant relationship, not a spousal relationship, it may make any order pursuant to the *Residential Tenancy Act* that is appropriate.

#### Conclusion

The Residential Tenancy Branch does not have jurisdiction over this dispute.

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: April 10, 2014

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Residential Tenancy Branch

