



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**MNDC, MND, FF**

### Introduction

This hearing was scheduled in response to the landlord's ("the applicant") Application for Dispute Resolution, in which the applicant requested compensation for damage to the rental unit, compensation for damage or loss under the Act and to recover the filing fee from the tenant ("respondent") for the cost of this Application for Dispute Resolution.

At the 1:30 p.m. start of the conference call hearing I introduced myself; only the applicant was present. I determined that the respondent had been served with notice of the hearing sent via express post.

At 1:57 p.m. the respondent and his witness entered the conference call hearing. At this point the parties were introduced and I explained I would take testimony in relation to jurisdiction. Up until this point of the hearing I had reviewed the application; the absence of any detailed calculation of the claim and the late evidence submission; which I determined could have been made at the time the application was submitted.

The respondent provided affirmed testimony that he received the hearing package in early February 2014.

The applicant's eighty-four page evidence submission was sent to the respondent via registered mail on April 30, 2014. The respondent and his witness confirmed that the evidence was received the day prior to the hearing. The witness stated that recent ferry cutbacks have resulted in some mail delays, which resulted in the later delivery. The respondent had the evidence before him and was prepared to reference that material during the jurisdiction submissions. I determined that if jurisdiction were found I would then consider a possible adjournment to allow the respondent time to make a written rebuttal submission, if desired.

### Jurisdiction

The applicant supplied a copy of a Supreme Court of British Columbia Final Order, issued on August 24, 2010. The Final Order relates to a family law case and a divorce Order between the applicant and respondent.

Clause 5 of the Final Order provides:

*This agreement may only be amended or varied by a court order, or by written agreement between the Husband and the wife, which amendment or agreement shall be duly executrix by the husband and the Wife by unrelated or independent persons.*

Clause 7 of the Final Order provides:

*The Husband shall forgive the loan he granted to the Wife as an investment into the Wife's business....in exchange for the privilege of living in the family home until he is able to make other arrangements.*

The applicant provided affirmed testimony confirming that the Final Order required monthly support payments to the applicant, in the sum of \$1,000.00.

The applicant has applied requesting compensation in the sum of \$25,000.00 based on what she described as a tenancy that was established by her ex-husband in the family home. The applicant said she issued receipts for rent payments and that she has declared \$1,000.00 per month as rental income; thus establishing a tenancy.

The respondent said that he had been making monthly payments to the applicant in the sum of \$3,000.00. The monthly payments were to be applied to the \$1,000.00 ordered by the Court; \$1,000.00 for property taxes, property insurance and utilities and the balance was meant to cover past debt.

The respondent said that in advance of a court proceeding held in 2013 he received some evidence from the applicant that included receipts issued in the sum of \$1,000.00. The respondent said he has no control over the decisions made by the applicant in relation to her income tax filing and how she declares income. The respondent said he had not entered into a tenancy and had hoped to eventually purchase the family home.

The parties agreed that the respondent vacated the family home in March 2012.

### Jurisdiction Analysis

Section 58(2) of the Act provides:

*(2) Except as provided in subsection (4), if the director receives an application under subsection (1), the director must determine the dispute unless*

*(a) the claim is for an amount that is more than the monetary limit for claims under the [Small Claims Act](#),*

*(b) the application was not made within the applicable period specified under this Act, or*

*(c) the dispute is linked substantially to a matter that is before the Supreme Court.*

From the evidence before me I find that the matters related to the family home, referred to in the Supreme Court of British Columbia Final Order dated August 24, 2010; set out the use and occupancy of the family home; allowing the respondent to reside in the family home. There was no evidence before me that this Order had been set aside or varied by the Court as provided by clause 5 of the Final Order, converting the agreement to a tenancy.

Therefore, I find that the matter related to the family home is linked substantially to a matter that is before the Supreme Court and decline to interfere with any Order of that Court.

Therefore, I decline jurisdiction.

#### Conclusion

Jurisdiction is declined.

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: May 13, 2014

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Residential Tenancy Branch

