



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the applicants' legal counsel

Counsel testified the respondent was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by courier to the respondent's agent on October 17, 2016 accordance with Section 89. Counsel provided confirmation, by way of a copy of an email dated December 3, 2016 that the respondent's agent intended to attend this hearing.

Based on the testimony and evidence submitted by the applicants' legal counsel, I find that the respondent has been sufficiently served with the documents pursuant to the *Act*.

Section 58(3) of the *Act* stipulates if the director accepts an Application for Dispute Resolution the director must resolve 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.

On October 21, 2016 Arbitrator G. Kahlon wrote a decision in response to another Application for Dispute Resolution submitted by the applicants in this claim. That decision determined that the dispute between the parties was substantially linked to a matter before the Supreme Court of British Columbia.

The applicants' legal counsel attending this hearing submitted that to date a hearing has not been set for their claim and the respondent's counterclaim in Supreme Court. As such, and upon review of the decision of October 21, 2016 I am satisfied that there has been no change in the status of the matter before the Supreme Court of British Columbia.

Legal counsel sought an adjournment of these proceedings until such time as the matters before the Supreme Court are resolved.

As there is no telling, at this point in time, when the matter will be heard by Supreme Court let alone when it will be resolved there, I find it would be unreasonable to adjourn this proceeding indefinitely.

While I acknowledge that, if the *Act* applies to the agreement between these two parties the applicants were required to dispute the 10 Day Notice to End Tenancy for Unpaid Rent that is the subject of this Application within 5 days of receipt of the Notice, I am satisfied the tenants have done so and have met this requirement. However, as there has been no change in the status of the matter before the Supreme Court, I find that I am unable to adjudicate this Application at this time.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

As I cannot proceed with this hearing I cannot even determine if the parties are landlord and tenant as defined under the *Act*, I find Section 55 of the *Act* cannot be applied in relation to the issuance of an order of possession until such time as the matter is resolved at Supreme Court and a new Application for Dispute Resolution has been brought forward.

Issue(s) to be Decided

The issues to be decided are whether the applicants are entitled to cancel a 10 Day Notice to End Tenancy and to recover the filing fee from the respondent for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 67, and 72 of the *Act*

Conclusion

Based on the above, I decline to consider this Application for Dispute Resolution. I order that applicants are at liberty to submit a new Application for Dispute Resolution at any time after there are no further matters related to the agreement between these parties before 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: December 07, 2016

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Residential Tenancy Branch