



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

CNC; CNR; FF

### **Introduction**

This Hearing was scheduled to consider the Applicants' application for dispute resolution seeking to cancel a notice to end tenancy for cause; to cancel a notice to end tenancy for unpaid rent; and to recover the cost of the filing fee from the Respondents.

### **Preliminary Matter: Jurisdiction**

The Applicants' legal advocate SH submitted that the Residential Tenancy Act has no jurisdiction over this matter. She submitted that the Applicants have a vested interest in the property, as "beneficial owners".

SH stated that a caveat was filed in the Land Title Office against the property and that the matter is now before the Supreme Court.

The Applicants provided a copy of a statutory declaration dated November 3, 2016, signed by the Respondents MH and LW. They also provided an Agreement dated June, 2014, also signed by MH.

### **Analysis**

Residential Tenancy Policy Guideline 27 provides, in part:

#### **5. TRANSFER OF AN OWNERSHIP INTEREST**

If the relationship between the parties is that of seller and purchaser of real estate, the Legislation would not apply as the parties have not entered into a "Tenancy Agreement" as defined in section 1 of the Acts. It does not matter if the parties have called the agreement a tenancy agreement. If the monies that are changing hands are part of the purchase price, a tenancy agreement has not been entered into. Similarly, a tenancy agreement is a transfer of an interest in land and buildings, or a license. The interest that is transferred, under section 1 of the Acts, is the right to

possession of the residential premises. If the tenant takes an interest in the land and buildings which is higher than the right to possession, such as part ownership of the premises, then a tenancy agreement may not have been entered into. In such a case the RTB may again decline jurisdiction because the Acts would not apply.

In the case of a tenancy agreement with a right to purchase, the issue of jurisdiction will turn on the construction of the agreement. If the agreement meets either of the tests outlined above, then the Acts may not apply. However, if the parties intended a tenancy to exist prior to the exercise of the right to purchase, and the right was not exercised, and the monies which were paid were not paid towards the purchase price, then the Acts may apply and the RTB may assume jurisdiction. Generally speaking, the Acts apply until the relationship of the parties has changed from landlord and tenant to seller and purchaser.

[reproduced as written]

Based on the documentary evidence and the oral testimony, I find that the Applicants may have an interest in the property which is higher than the right to possession and I decline jurisdiction in this matter.

### **Conclusion**

I decline to accept jurisdiction in this matter.

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 06, 2016

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Residential Tenancy Branch