



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, ERP, LRE, OLC, OPT, OT, PSF, RP, RPP

### Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution filed on March 1, 2018, wherein the Applicants requested the following relief:

- an Order canceling a 2 Month Notice to End Tenancy for Landlord's Use;
- an Order that the Landlord make repairs to the rental unit, emergency and otherwise;
- an Order restricting the Landlord's right to enter the rental unit;
- an Order of possession in favour of the Tenant;
- an Order that the Landlord provide services or facilities required by law;
- an Order that the Landlord return the Tenant's personal property; and,
- other unspecified relief.

The hearing was conducted by teleconference on May 10, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

### Preliminary Matter—Jurisdiction

Filed in evidence was a copy of the first page of a "Notice of Civil Claim", which appears to have been filed in the B.C. Supreme Court on March 13, 2018 and amended on March 15, 2018. While the balance of the document was not present, the Applicants confirmed the nature of the claim is their claim to an interest in the subject property.

Although counsel for the Respondent stated he had not been served with the Supreme Court action, he confirmed during the hearing he was instructed to accept such service.

Section 58(2)(c) provides that Arbitrators may decline jurisdiction over a matter if the matter is substantially linked to a matter before the B.C. Supreme Court. Consequently, as the Application before me is substantially linked to a matter before the B.C. Supreme Court, I decline jurisdiction to hear the Application.

I note that even in the event the Applicant had not commenced an action in the B.C. Supreme Court, I would decline jurisdiction as, based on the documentary evidence filed and the testimony of the parties, I find that the living arrangement between the parties is a *license to occupy*, not a *tenancy*.

The power and authority of the Residential Tenancy Branch is derived from the *Residential Tenancy Act*. The dispute resolution process does not create a court and as such, Arbitrators delegated under the *Act*, do not have inherent powers arising under the common law which are possessed by a Supreme Court Justice. An Arbitrator may only decide issues which relate to residential tenancies and which fall under the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act*.

Guidance can be found in *Residential Tenancy Branch Policy Guideline 9—Tenancy Agreements and Licenses to Occupy* which provides in part as follows:

...  
A license to occupy is a living arrangement that is not a tenancy.

...  
Some of the factors that may weigh against finding a tenancy are:

- Payment of a security deposit is not required.
- The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.
- The occupier pays property taxes and utilities but not a fixed amount for rent.
- The owner, or other person allowing occupancy, retains the right to enter the site without notice.
- The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.
- The parties have agreed that the occupier may be evicted without a reason, or may vacate without notice.
- The written contract suggests there was no intention that the provisions of the *Manufactured Home Park Tenancy Act* apply.

The arbitrator will weigh all of the factors for and against finding that a tenancy exists, even where the written contract specifies a license or tenancy agreement. It is also important to note that the passage of time alone will not change the nature of the agreement from license or tenancy.

...

In the case before me the parties agreed to the following factors which I find indicate this is not a tenancy:

- the Applicants did not pay a security deposit to the Respondent, although they may have paid one to the previous owner;
- the Applicants do not pay rent, although they may pay towards some utilities; and,
- the Applicant, M.S.M., is the maternal nephew of the Respondent and occupancy appears to have been granted out of generosity.

### Conclusion

Pursuant to section 58 of the *Residential Tenancy Act* I decline jurisdiction as the dispute between the parties is linked substantially to a matter that is before the B.C. Supreme Court.

Further, the living arrangement between the parties is a license to occupy, not a tenancy, such that the *Residential Tenancy Act* does not apply.

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 10, 2018

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Residential Tenancy Branch