



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, OPL, MNRL, FFL

### Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession based on notices to end tenancy issued for unpaid rent, for cause, and for landlord's use of property; and, a Monetary Order for unpaid rent and loss of rent. Both parties and their respective legal counsel appeared at the hearing and had an opportunity to make relevant submissions and respond to the other party's submissions pursuant to the Rules of Procedure.

### Preliminary Issue -- Jurisdiction

At the outset of this hearing I determined it necessary to consider whether I have jurisdiction to resolve this dispute.

The applicant and respondent are brothers, herein referred to by their initials. The applicant in this matter is JB and the respondent is RB. The subject property was the parties' childhood home and more recently the property occupied by their mother until she was hospitalized in February 2018 and then died in March 2018.

As of January 2018, JB and his mother held title to the subject property as joint tenants. While the parties' mother was hospitalized RB occupied the property. After their mother died JB became the sole owner of the property.

The parties provided consistent testimony that in April 2018 JB approached RB with respect to RB paying him \$1,000.00 per month starting May 1, 2018 to offset the costs associated with owning the home, including: property taxes, insurance and utilities that were in their mother's name. RB made two payments to JB in May 2018: \$500.00 and \$200.00 but no further payments to JB have been made. The utilities were

subsequently transferred into RB's name and JB was agreeable to reducing the monthly payment to reflect the lower costs.

On July 17, 2018 JB's legal counsel served three Notices to End Tenancy upon RB: a *10 Day Notice to End Tenancy for Unpaid Rent or Utilities*; a *1 Month Notice to End Tenancy for Cause*; and, a *2 Month Notice to End Tenancy for Landlord's Use of Property*.

RB continues to occupy the subject property and on October 4, 2018 a Notice of Civil Claim ("NOCC") was deposited in The Supreme Court of British Columbia ("SCBC"). RB's legal counsel uploaded a copy of the NOCC claim to the Residential Tenancy Branch and sent a copy to JB's legal counsel by facsimile.

JB's legal counsel objected to the admittance of NOCC on the basis it was submitted late for this proceeding, not yet properly served, and irrelevant.

Undeniably, the NOCC was submitted late for this proceeding. RB's legal counsel was asked to explain the reason for the late submission. I heard that time was needed to interview witnesses, prepare the NOCC and file it in SCBC. Taking into account the NOCC was submitted and a copy given to JB's legal counsel only one day before this hearing, I asked JB whether an adjournment would be appropriate in order to review and respond to the submissions in the NOCC. JB's legal counsel indicated that an adjournment would not be sought due to concerns over the current condition of the property and lack of payments from RB.

JB's lawyer pointed out that he has not been retained to act on behalf of JB with respect to the matters raised in the NOCC and that proper service of the NOCC has not been accomplished. JB's lawyer also pointed out that a Certificate of Pending Litigation has not been registered on title to the property. RB's lawyer stated the NOCC will be properly served upon RB; a Certificate of Pending Litigation is in progress and that if I were to proceed with this matter and issue an Order of Possession RB will seek a stay. JB's lawyer stated that seeking a stay of any Order of Possession I issue would be the appropriate course of action.

As to relevancy, RB's lawyer argued that the issue of ownership of the subject property is relevant since a landlord/tenant relationship must involve an owner of the property and the current ownership by JB is being challenged by way of the NOCC and reflects RB's position that he has a beneficial ownership in the property. JB objected to the assertion that he unlawfully acquired the property and JB's legal counsel stated that it

could take more than a year for the matter to be heard in SCBC and that in the interim it is reasonable to find a tenancy agreement between the parties.

### Preliminary Issue -- Analysis

As provided under section 2 of the *Residential Tenancy Act* ("the Act"), the Act applies to tenancy agreements between a landlord and tenant concerning the tenant's right to occupy and use a rental unit and residential property. My authorization to resolve disputes is conveyed by the Director of the Residential Tenancy Branch. Accordingly, my jurisdiction to resolve disputes is limited to disputes between a landlord and tenant concerning a tenant's right to use and occupy a rental unit and residential property unless the agreement. There are certain living accommodation that is exempted from the Act, as provided in section 4. Further, section 58(2) of the Act provides that certain Applications that have been filed under the Act may not be resolved by the Director.

Section 58(2) and (4) of the *Residential Tenancy Act* ("the Act") provides:

(2) Except as provided in subsection (4), if the director accepts an application under subsection (1), the director must resolve the dispute under this Part unless

- (a) the claim is for an amount that is more than the monetary limit for claims under the *Small Claims Act*,
- (a.1) the claim is with respect to whether the tenant is eligible to end a fixed term tenancy under section 45.1 [*tenant's notice: family violence or long-term care*],
- (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.

(4) The Supreme Court may

- (a) on application, hear a dispute referred to in subsection (2) (a) or (c), and
- (b) on hearing the dispute, make any order that the director may make under this Act

[Reproduced as written with my emphasis underlined]

The definition of “landlord” under section 1 of the Act includes an owner of the property, or a person authorized to act on behalf of the owner. Accordingly, I consider the ownership of the subject property, including an allegation of beneficial ownership, is a relevant matter to consider in determining whether I have jurisdiction to resolve a dispute. Since the NOCC raises the issue of ownership of the property I consider it to be a relevant document.

As for the late submission of the NOCC, Rule 3.17 of the Rules of Procedure provides me discretion to admit late filed evidence upon hearing from both parties as to its acceptance and permitting the recipient more time to review the late filed evidence. While the NOCC may have been filed sooner, RB’s lawyer provided a reason for the delay in filing the NOCC and I decline to find there was a deliberate or willful violation of the Rules of Procedure. Taking into account the late submission of the NOCC but the relevance of the document, JB was given the opportunity to request an adjournment but JB declined to seek an adjournment. Therefore, I have admitted the NOCC and considered it in making this decision.

While the NOCC has yet to be properly served upon JB, I accept that the matter under dispute is before the SCBC since it has been deposited in the SCBC registry.

Upon review of the NOCC, I note that it includes allegations that JB’s acquisition of a joint tenancy interest of the subject property was unlawful and the relief sought by RB includes transferring ownership in the property to RB. As such, I find that ownership of the subject property is a matter before the SCBC and that the dispute before me is substantially linked to ownership, and the costs of ownership. Therefore, I decline to accept jurisdiction to resolve the Application that was filed by JB.

While I appreciate the costs of ownership of the subject continue to accrue while the matter awaits a resolution in the Supreme Court, and there may be issues with respect to the current condition of the property, those issues do not form a basis for me to find a tenancy to which the *Residential Tenancy Act* applies. The applicant JB is at liberty to pursue the appropriate relief in the appropriate forum.

Conclusion

The respondent has challenged the ownership of the subject property and that is a matter currently before the Supreme Court. Accordingly, I have declined to resolve this dispute pursuant to section 58(2)(c) of the Act.

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: October 10, 2018

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Residential Tenancy Branch