



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPRM-DR FFL

### Introduction

This hearing dealt with the applicant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- An order of possession pursuant to section 55;
- A monetary order pursuant to section 67; and
- Authorization to recover the filing fee from the respondents pursuant to section 72.

Both parties were represented at the hearing. The respondents were represented by counsel.

### Preliminary Issue – Jurisdiction

Based on the evidence submitted prior to the hearing, a question arose in regards to whether I had jurisdiction regarding this application. Specifically, I needed to determine whether I had jurisdiction to hear this matter, or whether it was a matter substantially linked to a matter before the Supreme Court of British Columbia ("SCBC").

Regarding the issue of jurisdiction, the parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. I confirmed with both parties the evidence packages before me.

### Issue(s) to be Decided

Do I have jurisdiction to consider this application?

## Background and Evidence

There is ongoing litigation pertaining to the relationship between the parties before the Supreme Court of British Columbia. The applicant submitted into documentary evidence SCBC pleadings relating to the ongoing litigation

The applicant states the following in their written submissions:

[The respondent's parent] was either a tenant or a common law spouse of the owner of the property, who died December 2013. That status is yet to be determined by the court. Upon [the respondent's parent's] death in May 2018, her son [the respondent PA] continued to live on in the property without payment of rent. Letters between my lawyer and lawyer for [the respondent's parent's] estate (May & Sept 2018) requested discussion/info in relation to these properties, i.e. Tenants? Vacant? List for sale? No response was ever received.

The applicant states that the issue of administration of the estate of the deceased owner of the property has now been settled and the applicant has been granted letters of administration. As evidence the applicant submitted a land title search for the rental property showing that they are listed as registered owner in their capacity as administrator for the estate of the deceased property owner.

The applicant submits that the issue of ownership of the property has been settled and while there is ongoing litigation between the parties that pertains to issues unrelated to the present application.

The respondent submits that the ongoing litigation pertains to issues involving the interests of the parties in the rental property.

## Analysis

Section 58 of the *Act* states the following, in part:

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

It is clear that the present Application pertains to the same property that is part of the estate litigation before the SCBC. While I accept the applicant's submission that the dispute property has been transferred into their name as administrator of the estate I find that the issues of interest in the property have not yet been settled.

As such, I find that the present Application is linked substantially to a matter that is currently before the SCBC, as per section 58(2)(c) of the *Act*. Consequently, I find that I have no jurisdiction to consider this matter.

#### Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

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: January 04, 2019

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Residential Tenancy Branch