



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, OLC

### Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

The tenant RG attended the hearing, representing the three named applicants. Both landlords attended the hearing and were represented by their legal counsel, RL.

At the commencement of the hearing, the landlord advised that the parties agree to an adjournment of this hearing for the tenant to submit complete evidence at a later date. Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* allow parties to request that hearings be adjourned.

Rule of Procedure 7.9 states that without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- The oral or written submissions of the parties;
- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party

Prior to consideration of submissions of both parties and despite their agreement for an adjournment I dismissed the request for adjournment. I did so as I felt it was necessary to determine whether or not I had jurisdiction to hear the claim at all which might

override the need to adjourn the hearing. I determined that if I did not currently have jurisdiction an adjournment would not contribute to resolution of the claim.

Pursuant to section 58(1) of the *Act*, a person may make an application for dispute resolution in respect of the person's rights, obligations and prohibitions under the *Act* or the terms of a tenancy agreement. Section 58(2) of the *Act* states:

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.** (emphasis added)

Furthermore, Section 58(4) of the *Act* states:

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*.

The landlord provided in his evidence a copy of a British Columbia Supreme Court Order. In that order, an Order of Possession issued by an arbitrator of the Residential Tenancy Branch was stayed until January 31, 2019 or until the hearing of a Petition for Judicial Review, whichever comes first. Both parties contend that the Petition for Judicial Review has not yet been set down for hearing and the matter remains before the Supreme Court.

The Application for Dispute Resolution before me, submitted by the tenants, seeks compensation for actions taken by the landlords in relation to the events leading up to the previous hearing that granted the landlord the order of possession and is now before the Supreme Court for Judicial Review.

Therefore, I find the issues identified by the tenants in their application are substantially linked to the petition that is currently before the Supreme Court. Section 58(2) of the *Act* prevents the director or his delegate from resolving this dispute and Section 58(4) of the *Act* definitively grants the Supreme Court exclusive jurisdiction to do so.

Accordingly, I find that the Residential Tenancy Branch does not, currently have the jurisdiction to resolve this dispute.

Conclusion

Based on the above, I decline to hear the tenants' application for want of jurisdiction. The tenants are at liberty to file a new application at any time after these issues are resolved at Supreme Court.

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 25, 2019

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Residential Tenancy Branch