



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, FFL

### Introduction

On July 3, 2019, the Applicant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting an order of possession based on issuance of a Two Month Notice to End Tenancy for Landlord Use of Property dated April 3, 2019 (“the Two Month Notice”).

The matter was set for a conference call hearing. The Applicant and Respondent appeared at the hearing. The Applicants agent appeared on behalf of the Applicant. At the start of the hearing I introduced myself and the participants. The Applicant and Respondent provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

Both parties provided documentary evidence to the Residential Tenancy Branch prior to the hearing. Both parties testified that they did not serve a copy of their documentary evidence to the other party prior to the hearing.

Principles of natural justice require that parties disclose evidence to each other prior to the hearing. Since both parties did not disclose their evidence to each other, so that the evidence could be considered with an opportunity to respond, it would be unfair for me

to accept and consider the evidence provided by both parties. The Applicant's and Respondent's documentary evidence is excluded from the hearing.

### Issues to be Decided

- Is the living arrangement a tenancy under the Act?
- Is the Landlord entitled to an order of possession based on issuance of a Two Month Notice To End Tenancy For Landlord's Use Of Property?

### Background and Evidence

The Respondent testified that he is not a Tenant. He testified that he entered into a purchase agreement of the dispute property 22 years ago with his mother who is the Applicant. He testified that there is no tenancy agreement because the living arrangement is as co –owners. He testified that they split the mortgage payments and other expenses such as taxes. He testified that they have a purchase contract.

The Respondent testified that his mother, the Applicant, lived with him at the dispute address for approximately 19 years, prior to her leaving due to an incident. The Respondent testified that the Applicant has keys to the property and used to come and go into the premises at will.

The Landlord's agent testified that the Respondent is a Tenant under a verbal agreement. He testified that there is no written tenancy agreement. He testified that he does not know when the tenancy began, but provided testimony acknowledging that the Applicant lived at the dispute property with the Respondent for approximately 18 years. He testified that there was no new agreement entered into when the Applicant stopped residing at the dispute address. He testified that there is a peace bond in place that applies to the Applicant and Respondent.

The Applicant's agent submitted that the respondent is required to pay room and board in the amount of \$400.00 each month.

The Landlord issued the Tenant a 2 Month Notice dated April 3, 2019. The reason for ending the tenancy in the Notice states:

*The rental unit will be occupied by the Landlord or the Landlord's close family member.*

The Respondent testified that he became aware that the Applicant had used the property to secure a loan without the Respondents knowledge. The Respondent testified that in 2018 he made an application to the Supreme Court making a claim for half ownership of the dispute address property. The Respondent testified that the Supreme Court proceeding is still ongoing. The Respondent testified that the Applicant is aware of the claim and the Supreme Court proceedings.

The Applicant's agent provided testimony confirming that the Applicant is aware of the claim and Supreme Court proceeding.

### Analysis

Section 58 (1) of the Act provides:

*Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:*

- (a) rights, obligations and prohibitions under this Act;*
- (b) rights and obligations under the terms of a tenancy agreement that*
  - (i) are required or prohibited under this Act, or*
  - (ii) relate to*
    - (A) the tenant's use, occupation or maintenance of the rental unit,*
    - or*
    - (B) the use of common areas or services or facilities.*

Section 58 (2) of the Act provides that 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.***  
***[my emphasis]***

Section 4 (c) of the Act provides that the Act does not apply to living accommodation in which the Tenant shares bathroom or kitchen facilities with the owner of that accommodation.

Based on all of the above, the evidence and testimony of the parties, and on a balance of probabilities, I find as follows:

I find that there is insufficient evidence from the Applicant to establish that the Respondent is a Tenant. Both parties testified that the Applicant and Respondent lived together at the dispute address for approximately 18 or 19 years. I find that the living arrangement was entered into approximately 22 years ago and the Applicant and Respondent were sharing the premises. It appears to me that the parties are either co-owners or in a roommate situation.

The Act does not give me jurisdiction to resolve disputes involving property owners. Even if I am wrong and the living arrangement was under a tenancy agreement, the Act does apply to a living arrangement where the Tenant shares bathroom or kitchen facilities with the owner of that accommodation.

I find that I do not have jurisdiction to hear the matter and resolve the dispute.

In addition, I find that the parties remain involved in a dispute that is before the Supreme Court of British Columbia regarding the ownership of the property. In addition to my finding that I have no jurisdiction; pursuant to section 58(2)(c) of the Act the dispute cannot be resolved under my delegated authority from the director of the Residential Tenancy Branch.

### Conclusion

I find that there is insufficient evidence from the Applicant to establish that the Respondent is a Tenant. I find that the living arrangement was entered into approximately 22 years ago and the Applicant and Respondent were both living in the unit.

The Act does not give me jurisdiction to resolve disputes involving property owners. Even if I am wrong and the living arrangement was under a tenancy agreement, the Act does apply to a living arrangement where the Tenant shares bathroom or kitchen

facilities with the owner of that accommodation. I decline jurisdiction to hear the matter and resolve the dispute.

In addition, I find that the parties remain involved in a dispute that is before the Supreme Court of British Columbia over the ownership of the property. Pursuant to section 58(2) (c) of the Act the dispute cannot be resolved.

The Applicants request for an order of possession based on issuance of a Two Month Notice to End Tenancy for Landlord Use of Property dated April 3, 2019, is dismissed without leave to reapply.

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: August 20, 2019

---

Residential Tenancy Branch