



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL-S, MNRL-S, FFL

### Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution ("application") seeking remedy pursuant to the *Residential Tenancy Act* ("Act") for a monetary claim of \$11,380.00 comprised of unpaid rent or utilities, damage to the rental unit, site or property, to retain the tenants' security deposit and/or pet damage deposit, and to recover the cost of the filing fee.

The tenants and the landlords attended the teleconference hearing. The tenants and landlords were affirmed and the tenants testified that it was their opinion that the tenancy agreement included a "Rent to Own" agreement with the landlords. In fact, the tenancy agreement indicated two amounts of monthly rent, one being \$2,000.00 for the rent to own option, or \$2,200.00. In addition, the addendum to the tenancy agreement also mentions a "Rent to Own" agreement.

In addition to the above, section 5 of the *Act* states:

### **This Act cannot be avoided**

- 5** (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

And although section 5 of the *Act* states that a landlord may not contract outside of the *Act*, the landlords included the following wording in their tenancy agreement addendum under "2", which I find support the tenants' position that they had an interest in the property that extended beyond mere possession of the rental unit:

## 2. Security & Pets Deposit

The tenant agrees to waive the interest and the landlord repay deposit only to the tenant at the end of the tenancy agreement after passing house inspection.

If the “Rent to Own” contract is signed, the deposit will become a part of the payment at the end of the Purchase & Sale contract.

Given the potential of an interest in the real property by the tenants beyond mere possession, **I decline to hear this matter due to lack of jurisdiction under the Act** on the grounds that determination of such interest is within the exclusive jurisdiction of the Supreme Court of British Columbia.

I do not grant the recovery of the cost of the filing fee as a result.

### Conclusion

I decline to hear this matter due to lack of jurisdiction under the *Act*. This matter falls within the exclusive jurisdiction of the Supreme Court of British Columbia.

I do not grant the recovery of the cost of the filing fee as a result.

This decision will be emailed to both parties at the email addresses confirmed during the hearing.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 22, 2019

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Residential Tenancy Branch