



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

This hearing was convened in response to an application for dispute resolution pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49; and
2. An Order to recover the filing fee for this application - Section 72.

The Applicant and the Respondent were each given full opportunity to be heard, to present evidence and to make argument. The Applicant’s Legal Counsel made submissions and argument on behalf of the Applicant.

### Issue(s) to be Decided

Does the Act apply to the dispute?

### Background and Evidence

The following are undisputed facts: The dispute address is a residence (the “Property”) occupied by the Applicant who is married, although separated, from the Respondent. Prior to the separation the Parties occupied the Property together. The Applicant has started divorce proceedings and has obtained a Certificate of Pending Litigation issued by the Supreme Court and dated September 22, 2017, indicating that the Applicant has a claim for an order respecting the division of the Property. The Applicant also has an Interim Consent Order from the Supreme Court dated March 25, 2019. This Order indicates that the Applicant is responsible to pay the mortgage on the Property. The

Respondent served the Application with a two month notice to end tenancy for landlord's use (the "Notice") with an effective move-out date of January 31, 2020.

The Respondent states that it is the sole owner of the property as indicated in the land title documents. The Respondent states that the issue at hand is not the division of assets in the Property but is in relation to the occupation of the Property. The Respondent states that the Applicant is occupying a matrimonial home and argues that it has an equal right to occupy the Property. The Respondent states that at some point the Applicant was making the mortgage payments to the Respondent and that the making of the mortgage payments is essentially an agreement on rent. The Respondent confirms that there is no tenancy agreement and that no security deposit was collected. The Respondent does not know when the tenancy started.

Legal Counsel argues that while there is no order for exclusive occupancy of the Property the Supreme Court has exclusive jurisdiction over the matter of occupancy of the Property under the Family Law Act. Legal Counsel argues that as the property is part of a marital dispute in front of the Supreme Court, the matter of occupancy is substantially linked to the proceedings at the Supreme Court.

### Analysis

Section 58(2)(c) of the Act provides that if the director accepts an application the director must resolve the dispute under this Part unless the dispute is linked substantially to a matter that is before the Supreme Court. It is undisputed that the Parties are in a matrimonial dispute. It is undisputed that a Certificate of Pending Litigation and an Interim Consent Order that speaks to mortgage payments for the Property by the Applicant have been issued by the Supreme Court. While the matter of occupancy may not be before the Supreme Court, I consider the Applicants viable argument that the Supreme Court has exclusive jurisdiction over the occupation of the Property as part of the divorce action. Without any argument from the Respondent in relation to exclusive jurisdiction of the Supreme Court over the occupancy of the

Property in the circumstances, I find that the dispute over occupancy is substantially linked to the divorce action that is before the Supreme Court. As there is no jurisdiction under the Act to consider the dispute over occupancy, I also consider that the Respondent had no basis to issue the Notice under the provisions of the Act. The application is dismissed.

Conclusion

The application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 04, 2020

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Residential Tenancy Branch