



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      LRE, CNR, OLC, LAT

### Introduction

The Applicant filed the Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) for an order that the Respondents comply with the provisions of the *Act*, an order authorizing them to change locks; and an order suspending or restricting the Respondents’ right to enter the unit. Additionally, they applied for an order to cancel a ‘10 Day Notice to End Tenancy for Unpaid Rent or Utilities’. They also applied for an order that the Respondents comply with the *Residential Tenancy Act* (the “Act”), the regulations and/or the tenancy agreement.

The Applicant filed their Application in this matter on May 28, 2020. They provided their evidence and notice of this hearing to the respondents on that same day. They stated this was through email, an established means of communication between the parties. The Respondent in attendance stated they did not receive the evidence prepared by the Application for this hearing. They also stated that this issue was live and occupied a lot of their time currently. They stated they were most familiar with the matter and prepared to speak to all matters at issue in this hearing.

I am satisfied the parties have an established means of communication and have discussed the matter a number of times prior to this hearing. By section 71 of the *Act*, I find the respondent in attendance here was sufficiently served with information and the Applicant’s evidence in this matter on May 28, 2020.

The matter proceeded by way of a hearing pursuant to section 74(2) on June 22, 2020. In the conference call hearing I explained the process and provided the attending parties the opportunity to ask questions. Both parties had the opportunity to present oral testimony and make submissions during the hearing.

Preliminary Issue - Jurisdiction

The Notice of Dispute Resolution shows the Applicant as the 'tenant' and the Respondents as the 'landlords' in this matter. The issue before is whether there is a tenancy agreement in place that establishes the relationship of 'tenant' and 'landlord' between the parties. To work through this issue, I shall refer to the parties as "Applicant"; "Respondent" who attended the hearing; and "purported landlord" who did not attend the hearing and was the subject of submissions.

The Applicant presented that they signed the tenancy agreement, as it exists, to their purported landlord on May 10, 2020. This purported landlord was not present at the hearing. The Applicant moved into the unit in early May. The Respondent stated they knew nothing about this agreement because the purported landlord "does not own the home." On May 13, 2020 the Respondent found the Applicant's personal belongings in their home, and then proceeded to change locks and window locks, and post a "no trespassing" sign.

The Applicant stated they were still in the unit and had paid rent for May and June to the purported landlord.

A current matter is before the BC Supreme Court on the matter of the sale and purchase of this unit. The Respondent applied for an order of possession and associated costs and expenses on June 9, 2020. Their application to the court sets out that they are the owner of the unit and the purported landlord entered a purchase agreement but failed to continue payments as agreed upon. By May 6 2020 the purported landlord notified the Respondent that they could do whatever they want with the unit, and also that "[they] knew of a renter if [the Respondent] was interested."

By May 13, the Respondent noticed personal belongings within the unit, and by May 20 they discovered the Applicant with their family residing in the home. The Applicant advised that she rented the unit from the purported landlord, paying \$1,000.00 in rent and \$500.00 each for security and pet damage deposits.

The Respondent informed the Applicant that there was no tenancy agreement and the purported landlord was not the owner. They then messaged the Applicant to leave the unit in 5 days. In response to this, the Applicant applied for dispute resolution to cancel a '10 Day Notice to End Tenancy for Unpaid Rent or Utilities'.

The Applicant presented that they made the agreement with the purported landlord to move in for May, and then after they moved in the Respondent visited the unit, had short discussions about the ownership of the unit with the Applicant, and then made the moves to get the Applicant out of the unit. This included changing the locks, entering the unit, and giving the Applicant a five-day timeframe to vacate the unit.

The Respondent here maintains that they acquired the unit through a purchase from the original owners. They informed the Applicant of this, advising that the purported landlord has no legal interest in the unit. The agreement between the Respondent and the purported landlord – which is now cancelled, null and void – is that the purported landlord would make payments to the Respondent toward ownership. Title and ownership of the unit would not transfer until all payments were completed. This did not happen. The Respondent here stated that the purported landlord tried this same manoeuvre previously with other prospective tenants in February 2020.

The Applicant presented a tenancy agreement. Initially the copy provided for this hearing bears the name of the purported landlord at the end without their signature, and nothing shown for the Applicant. The Applicant stated in the hearing that they signed the agreement with the purported landlord on May 10, 2020. By my request, after the hearing the Applicant provided a copy that shows their own signature and date on the final page of the agreement. In the hearing, they stated they did have a signed agreement in their possession. They maintained that this tenancy started on May 1, 2020.

The Applicant here applied to cancel the notice to end tenancy. The Respondent here sent a message to the Applicant via text message on May 24 2020 – this states: “As we do not have any rental tenancy agreement, and will not be entering into one, I am providing you with this notice to vacate the premises within 5 days.”

To approach this issue, I shall examine whether a legal tenancy was in place between the Applicant and the Respondent. Corresponding to this is the question of whether there is a tenancy between the Applicant and the purported landlord.

The *Act* section 2 states: “. . . this Act applies to tenancy agreements, rental units and other residential property.”

Further, the *Act* section 1 contains definitions as follows:

“**landlord**”, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner’s agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement,
  - or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this.

**“tenancy agreement”** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

From weighing the evidence and considering the submissions of both parties, I find there is no tenancy agreement in place between neither the Applicant and Respondent; nor the Applicant and purported landlord.

A ‘Contract of Purchase and Sale’ dated January 28, 2020 is in the evidence. It is electronically signed by the Respondent and the purported landlord. This sets the arrangement for the purchase price of \$23,500.00 to be paid in \$1000.00 monthly increments. An audit signature document accompanying that document shows the Respondent here signed on January 28, 2020, and the purported landlord signed on February 16, 2020.

The Applicant submitted a BC Registry ‘Bill of Sale’ bearing the execution date of November 6, 2019. The Applicant submitted this to show the sale from the previous original owners (i.e., before the Respondent) to the purported landlord and their daughter. The document itself bears the standard form note: “A Notice to Transfer or Change Ownership form must accompany the Bill of Sale.” There is no copy of such a notice of transfer in the evidence.

The Applicant moved into the unit in early May. By the Respondent’s testimony, the purported landlord had failed to make payments by this time, thereby nullifying the contract. There is evidence that shows the purported landlord offered to find tenants for the unit; however, the Respondent made it clear in the hearing they did not accept that. By this evidence, I find the Respondent did not authorize the purported landlord to act as agent for the renting of the unit. In sum, there was no authority granted by the Respondent for the purported landlord to sublease the unit.

To be clear, this is a document of purchase and sale and does not transfer ownership. Running counter to this is a ‘Transfer Verification Manufactured Home Registry’ document dated May 13, 2020 that shows the “New Registered Owner” is the Respondent. This is a legal document that proves ownership; therefore, I find the Respondent is the legal owner of the unit.

The May 13, 2020 document outweighs what the Applicant submits is a tenancy agreement. I find the tenancy agreement does not stand as confirmation that the purported landlord has ownership. Additionally, the Respondent’s evidence makes it plain that ownership was not transferred to the purported landlord.

I find the evidence does not show the purported landlord had authority to act on behalf of the owner. Therefore, there is no “landlord” here that matches to the definition set out in the *Act*.

I find the evidence also does not show there is a valid tenancy agreement. The initial copy provided by the Applicant does not bear the Applicant and purported landlord's signatures. The Applicant stated this was not signed in proper fashion because of the need to finish that electronically; however, the landlord's portion is not signed, while the previous null contract of purchase and sale they completed with the Respondent was signed electronically. Further, the second copy of the tenancy agreement sent by the Applicant *does* bear the Applicant's signature – they did not explain why they provided the signed copy later into the evidence if it was, in fact, the final document created.

Finally, the Applicant did not explain why they gave the name of the Respondent as that person responsible for giving the notice to end tenancy if they were not the landlord or responsible owner of the property. The purported landlord was not in attendance in the hearing. From this I find it more likely than not that the Applicant is trying to establish that the ownership of the unit by the purported landlord has some legal validity. I find the compelling testimony and greater weight of the evidence by the Respondent shows that it does not have legal validity.

Based on these facts, and an application of the legislation, I do not have jurisdiction to hear this Application. The evidence does not show a landlord-tenant relationship existed with the authorization of the owner; nor does it show a valid tenancy agreement governs the occupancy of the unit.

### Conclusion

Having declined jurisdiction to hear this matter, I dismiss this Application for Dispute Resolution in its entirety, 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 *Act*.

Dated: June 29, 2020

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Residential Tenancy Branch