



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OPT, FFT**

### Introduction

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

- An order of possession for the tenant pursuant to section 54;
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The words tenant and landlord in this decision have the same meaning as in the Act, and the singular of these words includes the plural.

The tenants attended the hearing and were represented by co-tenant, LL (tenant). The landlord was represented at the hearing by an agent, MG. (landlord). As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings and stated he had no concerns with timely service of documents.

### Preliminary Issue

At the commencement of the hearing, the landlord advised me that the case filed by the tenants at the Supreme Court of British Columbia seeking an order of possession was dismissed. The tenant testified that the case in the Supreme Court was adjourned generally, and that the case is still active.

The tenant testified that the Petition she filed on July 29, 2020 at the Supreme Court was brought before a Judge who advised her to get a lawyer and adjourned her case for that to happen. The same Judge made an order the following day regarding service upon the landlord. A copy of the order dated July 29, 2020 and court summary sheet dated July 30, 2020 were provided as evidence. A copy of the tenants' petition filed in the Supreme Court seeking to "*be able to get in and live in the house he agreed (sic) to rent to me, Possession of property*" was also provided as evidence.

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:

- (2) 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:

- (4) 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*.

In the petition filed at the Supreme Court, the tenants seek an order to *'be able to get in and live in the house'*. This, I find is reasonably similar to section 54 of the Residential Tenancy Act, for an order of possession to the tenant. The tenant testified that the matter was adjourned generally which means that the petition is still active before the Supreme Court.

Based on the testimony of the parties and the evidence provided, I am satisfied the matter before the Supreme Court is substantially linked to matter before me. 58(2) of the *Act* prevents the director or his delegate from resolving disputes substantially linked to matters before the Supreme Court. Section 58(4) of the *Act* definitively grants the Supreme Court the jurisdiction to do so. Accordingly, I find that the Residential Tenancy Branch does not have the jurisdiction to resolve this dispute at this time.

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 anytime after these issues have been 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: August 20, 2020

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Residential Tenancy Branch