



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

The Applicants filed an Application for Dispute Resolution on July 27, 2020 seeking an order to cancel the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”). They also applied for reimbursement of the filing fee for this hearing. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on September 1, 2020.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The Applicants and the Respondent attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

A representative of the Respondent addressed the prevalent issue in the hearing. An advocate for the Respondent attended the conference call hearing; however, they left the conference call hearing near the outset.

The Respondent prepared documentary evidence in advance for this hearing. The Applicants who attended did not receive a copy of this material prior to the hearing. They stated they were very familiar with the matter and wanted to proceed in the hearing. Based on this assurance, I proceeded to hear the matter with both parties speaking to the issue.

### Preliminary Issue - Jurisdiction

The Applicants described that there is no tenancy agreement, and there have never been any rent amounts paid. The Applicants do not consider themselves to be “tenants”. The Applicants are family members.

The parties disagree fundamentally on ownership of the unit. The Applicants maintain that the Respondent here is not the owner, while the Respondent presents that they bought the unit in 2003 from one of the Applicants. That individual Applicant entered into a tenancy agreement with the Respondent in 2006; however, the other Applicants presented this was signed under pressure and does not stand as a valid agreement.

The Respondent's position is that there is a valid tenancy agreement, and this makes them the landlord. They are now trying to complete a sale of the unit; however, the Applicants have blocked their efforts by interrupting sales events at the unit itself.

The Respondent issued the One-Month Notice on July 27, 2020 with a move-out date of August 31, 2020. The Applicants confirmed this mode of service and identified the copy of the document submitted by the Respondent for this hearing as being the same. They are here applying to cancel the One-Month Notice.

On the document, the Respondent indicated the following reasons for serving the One-Month Notice:

- tenant refused to pay rent/utilities since November 2019
- tenant engaged in an illegal activity that "adversely affect[ed] the . . . security, safety or physical well-being of another occupant or the landlord" where "Tenant[s] threatened/intimidated realtor who was engaged to sell this house"

The Respondent provided a copy of a Notice of Civil Claim filed by the Applicants in the BC Supreme Court on July 20, 2020. The subject of the claim refers to the home being used as collateral on a loan to the Applicant who was not present in the hearing. In their Civil Claim, the Applicants state this was a loan agreement, not that of purchase and sale as now alleged by the Respondent.

The Respondent's formal response was filed on August 18, 2020. Therein, they provided that one of the Applicants had sold the "rental premises" to them. They state there is a contract of purchase and sale in place, dated July 2003.

The *Act* section 58 provides the following:

- (2) . . . if the director accepts an application. . . the director must resolve the dispute . . . unless
- (c) the dispute is substantially linked to a matter that is before the Supreme Court.

Here, the subject of the ownership of the unit is at dispute in the BC Supreme Court. At this juncture I am unable to determine if a tenancy is in place as the Applicants assert an ownership interest in the residential property that exceeds that of a tenancy. I have no jurisdiction in this matter until the question of ownership is resolved in the Supreme Court.

The Applicants here filed their Notice of Civil Claim in the BC Supreme Court on July 20, 2020, prior to the Respondent issuing the One-Month Notice on July 27, 2020. Until such time as the matter is resolved in the BC Supreme Court, I have no jurisdiction to hear this Application.

The *Act* section 55 provides that I must grant a landlord an order of possession if a notice to end tenancy complies with form and content requirements, and I dismiss the tenant's application to cancel that notice. With no jurisdiction in this matter, I cannot issue an order of possession to the Respondent despite these provisions. The landlord/tenant relationship is not established in this matter and the *Act* exclusively applies to a tenancy.

As the Applicants are not successful in this Application, I dismiss their request to recover the filing fee.

### Conclusion

Having declined jurisdiction to hear this matter, I dismiss the 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 *Residential Tenancy Act*.

Dated: September 9, 2020

---

Residential Tenancy Branch