



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes** CNL, FFT

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") to cancel the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Notice**") pursuant to section 49.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### **Preliminary Issue - Jurisdiction**

The landlord seeks to end the tenancy of the tenant. The residential property is a single detached house. The tenant lives in the basement suite. The landlord lives in the upper unit. The units are separate.

The tenant alleges that he was a spouse (as defined by the *Family Law Act*) of the landlord. He has commenced an action in the BC Supreme Court. A copy of the Amended Notice of Family Claim, filed June 25, 2021, was submitted into evidence. In it, he claims an interest in the residential property.

Section 58(2) of the Act, in part, 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
  - [...]
  - (c) the dispute is linked substantially to a matter that is before the Supreme Court.

In order for me to be able to determine if the Notice is valid, I must first determine if the parties are in a landlord/tenant relationship. If they are not, and they are co-owners of the property, then I have no jurisdiction to adjudicate their dispute. Subject to conditions of an agreement between the co-owners, an owner may have a possessory right to the property.

The matter of whether the tenant has an interest in the residential property is squarely before the BC Supreme Court. As such, the issue of whether the parties to this application are in a landlord/tenant relationship is substantially linked to the matter

before the Supreme Court. Accordingly, pursuant to section 58(2), I must decline jurisdiction to adjudicate the application.

I advised the parties of this outcome at the hearing, made sure they understood why I declined to adjudicate the hearing, and advised them that they will have to resolve this dispute as part of the BC Supreme Court proceeding.

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 13, 2021

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Residential Tenancy Branch