



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDCT, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use (the Notice), issued pursuant to section 49;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation, or tenancy agreement, pursuant to section 67;
- an authorization to recover the filing fee for this application, under section 72.

Tenants MS and HS and the landlord attended the hearing. The landlord was assisted by lawyer DB. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

The tenants moved to the rental unit on August 16, 2016. The tenants affirmed the landlord, father of tenant HS, authorized them to occupy the rental unit and to pay the utility bills, taxes and insurance until the landlord's death. The tenants stated the

landlord accepted an offer from the tenants to purchase the rental unit with a flexible closing date.

The landlord testified he authorized the tenants to occupy the rental unit and to pay the utility bills, taxes and insurance, the sale was not finalized and that he plans to move to his property.

The Notice was served on April 19, 2021. This application was submitted on May 01, 2021. The tenants submitted a civil claim before the Supreme Court of British Columbia (the civil claim) on August 04, 2021. The Notice of Civil Claim states:

#### Part 1: STATEMENT OF FACT

5. The Plaintiffs reside in the Property pursuant to an arrangement with the Defendant whereby the Plaintiffs reimburse the Defendant the monthly utilities, property taxes, and insurance for the Property while the Defendant retains use of the basement suite and half of the garage (the "Arrangement").

8. To entice the Plaintiffs to agree to relocate, the Defendant made the following assurances:

- (a) the Plaintiffs could live in the Property pursuant to the Arrangement until the Defendant's death;
- (b) the Defendant would not sell the Property to a third party or evict the Plaintiffs from the Property; and
- (c) upon the death of the Defendant, [tenant] would inherit half of the Defendant's estate and the Plaintiffs would have a first option to purchase the remaining interest in the Property from the Defendant's estate (collectively, the "Defendant's Assurances").

12. On or about September 23, 2019, the Defendant provided the Plaintiffs with a written and signed offer to sell the Property to the Plaintiffs for \$600,000 (the "Defendant's Offer").

13. In or about December 2019, the Plaintiffs accepted the Defendant's Offer by verbally agreeing to purchase the Property pursuant to the Defendant's Offer (the "Agreement").

14. The parties agreed to be flexible on the Agreement's completion date, which has been informally set and amended on a number of occasions.

#### Part 2: RELIEF SOUGHT

1. In the first instance, the Plaintiffs seek:

- (a) A declaration that the Agreement is a valid and enforceable contract.
- (b) An order that the Defendant specifically perform the terms of the Agreement.
- (c) An order that the Defendant provide vacant possession of the Property's basement suite to the Plaintiffs upon the completion of the Agreement.
- (d) In the alternative, damages in lieu of specific performance of the Agreement.
- (e) In the further alternative, damages for breach of Agreement.

2. In the further and separate alternative, the Plaintiffs seek:

- (a) A declaration that the Defendant holds in trust for [tenant] a 50% interest in the Property.
- (b) An order that the Plaintiffs shall be permitted to live in the Property pursuant to the Arrangement until the Defendant's death.

The tenants said this matter is related to the civil claim and should be heard before the Supreme Court of British Columbia.

The landlord's counsel affirmed this matter is not related to the civil claim and the Residential Tenancy Branch has jurisdiction.

Residential Tenancy Branch Policy Guideline 27 states:

Section 58(3) of the RTA and 51(3) of the MHPTA provide that a court does not have and must not exercise any jurisdiction in respect of a matter that must be submitted to the director for dispute resolution, except if:

- the claim is for an amount that is more than the monetary limit for claims under the Small Claims Act
- the dispute is linked substantially to a matter that is before the Supreme Court

Based on the Notice of Civil Claim, I find this matter is substantially linked to a matter that is before the Supreme Court of British Columbia.

The tenants must bear the cost of the filing fee, as the tenants were not successful.

### Conclusion

In accordance with Section 58(2)(d) of the Act, I find I have no jurisdiction to hear this matter.

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 03, 2021