



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNR, OLC, FFT**

### Introduction

The hearing was convened as a result an application made by the applicants under the *Residential Tenancy Act* (the “Act”) for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 8, 2021 (“10 Day Notice”) pursuant to section 46;
- an order for the respondent to comply with the Act, the *Residential Tenancy Regulation* and/or tenancy agreement pursuant to section 62(3); and
- authorization to recover the filing fee for this application from the respondent pursuant to section 72(1).

### Preliminary Issue - Jurisdiction

At the outset of the hearing, I raised the issue as to whether the Residential Tenancy Branch had jurisdiction to adjudicate this dispute. The parties made submissions on this issue.

The respondent alleged that there was an oral tenancy with the applicants for the residential premises (“Premises”). He stated the tenancy is on a month-to-month basis with rent of \$2,000.00 per month payable on the 1<sup>st</sup> of each month. The applicants denied there was any tenancy agreement, oral or otherwise.

The applicants stated the parties entered into a purchase and sale agreement dated June 10, 2020 (“Purchase Agreement”) for the purchase of the Premises. DB submitted a copy of the Purchase Agreement. DB stated the applicants were to pay \$2,000.00 per month toward the down of \$20,000. DB stated the applicants provided the respondent with post-dated cheque for \$2,000.00 per month. DB testified it was agreed by the

parties that, during the period in which the applicants were making payments towards the down payment, the respondent gave them possession of the Premises until the closing of the Purchase Agreement. As of the date of this hearing, there has been no closing of the Purchase Agreement. DB stated the applicants wanted to proceed with the closing of the Purchase Agreement but the respondent had refused. DB stated the respondent wanted an additional \$300,000.00 over the original sale price of \$450,000.00.

DB stated that the applicants have spent about \$80,000.00 renovating the Premises since the respondent had given them possession of the Premises. The respondent denied the amount DB claimed the applicants have spent on the Premises and stated they had caused substantial damage to the Premises. Notwithstanding the amount of damage the respondent claimed the applicants had caused, the respondent admitted that he had not given the applicants notice to stop making any further alterations or renovations to the Premises.

DB testified that the applicants had filed a legal action ("Civil Claim") in the Supreme Court of British Columbia in respect of the Purchase Agreement and their occupation of the Premises. KA acknowledged the Civil Claim had been filed in the Supreme Court.

#### Analysis:

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 of the Act states, in part, as follows:

#### **Determining disputes**

58(2) Except provided in subsection (4)(a), the director must not determine a dispute if any of the following applies:

[...]

**(d) the dispute is linked substantially to a matter that is before the Supreme Court.**

[...]

- 58(4) The Supreme Court may on application, hear a dispute referred to in subsection (2)(a) or (d),
- (a) Order that the director hear and determine the dispute, or
  - (b) hear and determine the dispute.

[emphasis in bold added]

Questions involving the status of the Purchase Agreement and ownership of the Premises are before the Supreme Court. The nature of the possessory rights of the applicants in the Premises, namely as tenants, licensees or owners or otherwise, will require interpretation of the terms of the Purchase Agreement. Before I can accept jurisdiction, I must be sure that the parties are bound by a landlord and tenant relationship. Without a decision from the Supreme Court as to the nature of the applicants' rights and interests in and to the Premises, I have no assurance that I have or do not have jurisdiction to make a determination of this dispute. As a result, I find this dispute is substantially linked to the matter before the Supreme Court.

### Conclusion

Section 58(2) of the Act prevents the director or delegate from resolving this dispute as it is substantially linked to a matter before the Supreme Court to do so. Accordingly, I have no jurisdiction to hear this matter.

I make no findings of fact (either express or implicit) as to jurisdiction, the nature or terms of the Agreement, or any other issue.

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: November 22, 2021

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Residential Tenancy Branch