



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LEWIS STREET APARTMENTS  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      MNDCT, RPP

### Introduction

This hearing dealt with a joiner application involving 11 separate files pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order requiring the landlord to return the tenant's personal property pursuant to section 65; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

Seven of the eleven tenants appeared at this hearing with their two advocates. Three landlord agents appeared with their lawyer on behalf of the landlord company owner (LSA). One landlord agent appeared on behalf of the property management company (BBA) for the landlord owner.

All parties acknowledged the above terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 2.5 hours.

I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests.

I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to Decide

Does the Residential Tenancy Branch have Jurisdiction to hear this joiner application?

### Background and Evidence

Both parties agreed to the following facts. On December 31, 2020, a fire occurred in one suite of a multi-unit residential apartment building. The fire was started by another tenant, who is not named in these applications. That tenant smoked in his bed with his oxygen tank nearby which rapidly spread the fire. As a result, the entire building was evacuated, and the named applicants were displaced from their home. The tenants never lived in their units again. All tenants received their January rent and security deposits back from the landlord.

The landlord's lawyer raised the issue of jurisdiction. He submits that the Residential Tenancy Branch ("RTB") does not have subject matter jurisdiction over these disputes, as they are fundamentally claims under the Occupier's Liability Act, RSBC 1995, c.337 ("OLA") or in the alternative, negligence claims. The "tenants' advocate" (LV) submits that since these claims are a result of a fire in the apartment building, the landlords are responsible to compensate the tenants for their losses through the RTB.

The landlord's lawyer provided oral and written submissions, citing a case from the British Columbia Court of Appeal ("BCCA"), *Janus v. The Central Park Citizen Society*, 2019 BCCA 173 ("*Janus*"). He stated that the BCCA found in *Janus* that when the primary legal basis for a claim is the OLA and negligence, the claim is not a dispute under the *Act*, and therefore, the RTB does not have jurisdiction. The landlord's lawyer submits that the facts in *Janus*, are similar and applicable in the matter before me.

The landlord's lawyer stated the following in his written submissions for this hearing. In *Janus*, an apartment fire occurred in an apartment building owned by the Central Park Citizen Society. Mr. Janus was a tenant in the building and alleged damages for personal injury and for loss of personal property. After a hearing in British Columbia Supreme Court ("BCSC") and at the RTB, Janus filed an application in the BCCA. The BCCA considered the jurisdiction of the RTB and found that the RTB did not have exclusive jurisdiction over every landlord and tenancy dispute. The BCCA considered sections 84 and 67 of the *Act*. *Janus* states at paragraph 29:

*In the present case, the factual matrix involves a landlord-tenant relationship, but Mr. Janus's claim does not arise solely by virtue of rights and obligations under the RTA. The primary legal basis of Mr. Janus's claim is the Occupier's Liability Act, RSBC 1995, c. 337, and in the alternative, negligence.*

The landlord's lawyer referenced a recent case from the BCSC, that was decided on October 29, 2021, *Price v. Kehal*, 2021 BCSC 2118 ("*Price*"), which cited the *Janus* case. *Price* states at paragraph 23:

*As noted by our Court of Appeal in Janus v. The Central Park Citizen Society, 2019 BCCA 173 ("Janus") at paras. 23 to 29, there are various disputes that may arise involving landlords and tenants that are not within the jurisdiction of the RTA. For example, at para. 25, the court specifically noted that there was no clear precedent for resolving personal injury claims in negligence under the RTA. Similarly, at para. 29 the court commented that the court may hear matters that are not solely arising from the tenancy agreements, such as those claimed under the OLA, or as a claim in negligence.*

The landlord's lawyer maintained that the RTB only has jurisdiction to order damages for non-compliance under 67 of the *Act*. He stated that the RTB does not have subject matter jurisdiction over the tenants' applications, as they are fundamentally OLA and negligence claims.

The tenants' advocate stated that the RTB has jurisdiction to decide the tenants' applications. She claimed that the landlords' inaction resulted in the tenant causing a fire at the rental property and displacing the applicant tenants and any subsequent loss that occurred, flows from the original inaction.

## Analysis

As the issue of jurisdiction was raised, I am required to decide on whether the RTB has the jurisdiction to hear the matter.

In the matter before me, the only documentation of the cause of the fire was submitted by the landlords. They hired an expert fire consulting company to determine the cause of the fire. The landlords provided a copy of that report for this hearing, which I reviewed. The expert found that the fire most likely resulted from the cigarette that the tenant was smoking in his bed, which ignited the bedding. The expert further states in his report that when the fire melted the plastic tubing on the tenant's oxygen tank, the increased oxygen caused the fire to spread rapidly. That tenant did not survive the fire and is deceased.

## Legislation

I find that the following sections of the *Act* are applicable, in addition to the sections as noted below in the case law section:

### *Enforcing rights and obligations of landlords and tenants*

6 (1) *The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.*

(2) *A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [determining disputes].*

### *Determining disputes*

58 (1) *Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:*

- (a) rights, obligations and prohibitions under this Act;*
- (b) rights and obligations under the terms of a tenancy agreement that*

- (i) are required or prohibited under this Act, or*

- (ii) relate to*

- (A) the tenant's use, occupation or maintenance of the rental unit, or*

- (B) the use of common areas or services or facilities.*

*Director's authority respecting dispute resolution proceedings*

62 (4) *The director may dismiss all or part of an application for dispute resolution if*

- (a) there are no reasonable grounds for the application or part,*
- (b) the application or part does not disclose a dispute that may be determined under this Part, or*
- (c) the application or part is frivolous or an abuse of the dispute resolution process.*

Case Law

In *Janus*, the BCCA found that the RTB has only jurisdiction in respect of non-compliance with the Act. That case was decided on May 21, 2019. I find that the following paragraphs of *Janus*, are applicable in the matter before me:

[2] On April 16, 2012, a fire broke out in an apartment building owned by the appellant Central Park Citizen Society and managed by the appellant Crosby Property Management Ltd. (together, “the Landlord”). Mr. Janus was a tenant in the building and resided down the hall from the unit in which the fire started. He helped the elderly tenant of that unit escape the building, delaying his own evacuation. On December 11, 2015, Mr. Janus filed a claim in the B.C. Supreme Court seeking damages for personal injuries resulting from exposure to smoke and asbestos dust, as well as damages for loss of personal property. Mr. Janus says the Landlord’s negligence contributed to his injuries because, among other things, ventilation was inadequate, and fire detection equipment had not been maintained. He says his injuries include chronic cough, sinus disease, aggravation of a prior work-related injury, chronic depression and cancer diagnosed about three years after the fire occurred.

...

[17] The judge concluded the limitation period in the RTA did not apply. I agree with that conclusion, although not for the reason that the damages claimed would exceed the monetary jurisdiction of the RTB. Rather, I am of the view that Mr. Janus’s claim is not an “RTA dispute” within the exclusive jurisdiction of the RTB. In other words, as I earlier noted, I would conclude that the RTB did not have subject matter jurisdiction over the claims as framed by Mr. Janus.

...

[23] Although s. 84.1 of the RTA gives the RTB exclusive jurisdiction over landlord/tenant disputes, it is apparent from a review of the RTA that the disputes

*in issue are those arising out of the tenancy agreement, the Act and the regulations:*

*2 (1) Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, rental units and other residential property.*

*(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.*

*Section 4 lists types of living accommodation that are not subject to the RTA, such as university residences and community care facilities. Section 7 is the general liability provision:*

*7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

*(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

*[Emphasis added.]*

*Under Part 5, "Resolving Disputes", the RTB is empowered to order damages, but only in respect of loss arising from non-compliance with the Act, the regulations or a tenancy agreement:*

*67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.*

I find that the following paragraphs of *Price*, which was recently decided, are applicable in the matter before me:



[8] As a very brief summary, and likely oversimplification, the petitioners claim, among other things, that the respondents were negligent causing personal injury to them, including severe respiratory issues, due to the alleged presence of mould and toxins in the premises. This is in addition to damages arising out of the breach of the Tenancy Agreement itself, damages for unjust enrichment for certain remedial work, the petitioners allege that they had to undertake as the Landlords would not, and damages for loss or conversion of chattels left at the premises after they ultimately left, alleging it was too unsafe to stay.

[9] The petitioners allege that after various medical issues arose with the Landlords refusing to cure numerous defects that made the property uninhabitable and unsafe, including mould, infestations, cracking walls, cracking roof structures, and unsafe deck issues, they had to evacuate the property on or around June 15, 2018.

[10] Mr. Price and Ms. Bott brought an application on August 10, 2019 before the RTB claiming damages for monetary loss or other money owed, and reimbursement of their filing fee, which they termed as “bad faith eviction” and valued at \$26,400. The two defendants on the tenancy agreement, as the Landlords, brought a cross application for compensation for damages caused to the rental unit, monetary loss, or other money owed, to recover unpaid rent, and reimbursement of their filing fee. The two applications were heard on December 10, 2019, with a decision being rendered on January 3, 2019. The application of the Landlords was dismissed with leave to re-apply. The tenants’ application was dismissed without leave to re-apply on the basis that they were not entitled to compensation under s. 51 of 51.3 of the RTA as there had not been a notice to end tenancy issued by the Landlords and that was the only statutory basis for their claim under the RTA, as they filed it.

....

[23] As noted by our Court of Appeal in *Janus v. The Central Park Citizen Society*, 2019 BCCA 173 (“Janus”) at paras. 23 to 29, there are various disputes that may arise involving landlords and tenants that are not within the jurisdiction of the RTA. For example, at para. 25, the court specifically noted that there was no clear precedent for resolving personal injury claims in negligence under the RTA. Similarly, at para. 29 the court commented that the court may hear matters that are not solely arising from the tenancy agreements, such as those claimed under the OLA, or as a claim in negligence.

*[26] The Claims for damages for negligence, under the OLA, and personal injury, and the Claims of the children and some of the Claims for economic loss are not within the RTA's exclusive jurisdiction, as noted in Janus. It is sufficient to determine this application on the basis that some claims are not within the jurisdiction of the RTA.*

As noted above, sections 2, 6 and 58 of the *Act* allow the RTB to determine rights and obligations between landlords and tenants, pursuant to the *Act* and tenancy agreements. Sections 7 and 67 of the *Act* specifically reference claims for compensation, arising under the *Act*, *Regulation* or tenancy agreement.

I find that the circumstances and facts of the tenants' applications are similar to *Janus*, which was recently upheld and cited in *Price*. In that case, a fire occurred in the building and the applicants sought compensation for personal injury and loss of personal property. In this case, the applicant tenants seek similar remedies, due to a fire started by another tenant in the building, not the landlord.

I find that the tenants failed to provide sufficient documentary or testimonial evidence to support their claim that the landlords' inaction resulted in the deceased tenant causing a fire at the rental property and displacing the applicant tenants. I find that the main issue raised by the tenants' advocate at this hearing, as to why the RTB had jurisdiction to hear these claims, was that she did not know what other venue could hear these claims, if not the RTB.

As a result, I am legally bound by the decisions from the BCSC and BCCA, as they are cases decided by the higher Courts. I find that these claims arise under the OLA or in the alternative, in negligence. The RTB does not have jurisdiction to decide claims under the OLA or in negligence. I find that these claims do not arise under the *Act*, the *Regulation* or the tenants' tenancy agreements.

Accordingly, I find that I do not have jurisdiction to hear the tenants' applications.

### Conclusion

I decline to exercise jurisdiction over the tenants' applications. I make no determination on the merits of the tenants' applications. Nothing in my decision prevents either party from advancing their claims before a Court of competent jurisdiction.



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: January 25, 2022

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Residential Tenancy Branch