



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Grand Bazaar A'la Turk North America Corporation and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      Landlord: OPL, FFL  
Tenant: CNL, OLC, FFT

### **Introduction**

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Two Month Notice to End Tenancy, pursuant to section 49;
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Landlord's Use of Property, pursuant to sections 49 and 55; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

### **Preliminary Issue- Amendment**

The landlord's application for dispute resolution lists only landlord H.S.H. The tenant's application for dispute resolution lists only landlord S.N. Both parties agree that the owner of the subject rental property is landlord H.S.H. and that S.N. is an agent of H.S.H.

The tenancy agreements entered into evidence state that the landlord is S.N. as power of attorney for H.S.H.

Section 1 of the *Act* defines landlord as:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

I find that both H.S.H. and S.N. meet the definition of a landlord as H.S.H. is the owner and S.N. is an agent of the owner. Pursuant to section 64 of the *Act*, I amend both applications to state both H.S.H. and S.N. as landlords.

The landlords, the tenant's agent and the parties' counsel attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony and to make submissions on the Residential Tenancy Branch's authority to hear this application under section 58(2)(d) of the *Act*.

Both parties confirmed their email addresses for service of this decision.

Preliminary Issue- Service

Both parties agree that they were each served with the other's application for dispute resolution and evidence. I find that the above documents were sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*, as both parties confirmed service.

Preliminary Issue- Authority to Determine Dispute

Section 58(2)(d) of the *Act* states:

(2) Except as 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.

Section 58(4)(a) of the *Act* states:

(4) The Supreme Court may, on application regarding a dispute referred to in subsection (2) (a) or (d),

(a) order that the director hear and determine the dispute

Both parties agree that the tenant has filed a Notice of Civil Claim in the British Columbia Supreme Court (B.C.S.C.) against landlord H.S.H. and that landlord H.S.H. has filed a Response to Civil Claim.

The Notice of Civil Claim states in part:

4. Clause 24.4 of the Tenancy Lease Agreement included an irrevocable option to purchase the Property for a price of \$1,600,000 (the "Option").

5. By letter dated October 25, 2021, [the Plaintiff] gave the Defendant notice of its decision to exercise the Option and purchase the Property.

6. At all material times, the Plaintiff has been and continues to be ready, willing and able to complete the sale and purchase of the Property in accordance with terms of the Tenancy Lease Agreement.

7. The Defendant has wrongfully breached and repudiated the Tenancy Lease Agreement by refusing to sell the Property.

8. By reason of the Defendant's wrongful breach and repudiation of the Tenancy Lease Agreement, the Defendant's have suffered loss, damage and expense.

## Part 2: RELIEF SOUGHT

1. Specific performance of the Tenancy Lease Agreement.
2. In the alternative, damages in lieu of specific performance.
3. In the further alternative, damages for breach of contract.
4. A certificate of pending litigation on the Property.
5. Such further relief as this honourable court deems just and meet.

Both parties agree that the Property referenced in the above pleadings is the subject rental property. Both parties agree that the tenant has filed a Certificate of Pending Litigation on the subject rental property.

Counsel for the tenant submitted that the purpose of the Notice of Civil Claim is, in part, to obtain specific performance of the sale of the subject rental property from H.S.H. to the tenant.

Counsel for the tenant submitted that the tenant's agent resides in the subject rental property, and through the purchase of the subject rental property, pursuant to the Tenancy Lease Agreement, is seeking to continue to reside in the subject rental property.

Counsel for the tenant submitted that the matter before the B.C.S.C. is substantially linked to these applications for dispute resolution because both relate to possession of the subject rental property.

Counsel for the tenant submitted that a change in possession of the subject rental property, as requested in the landlord's application for dispute resolution, would have a huge impact on the B.C.S.C. proceeding.

Counsel for the landlord submitted that the matters before the Residential Tenancy Branch are not substantially linked to the B.C.S.C. action because the B.C.S.C. action seeks specific performance to purchase the subject rental property, not specific performance to reside in the subject rental property. Counsel for the landlord submitted that if the landlord's son moves into the subject rental property, the tenant may still purchase the subject rental property if the tenant is successful in their B.C.S.C. claim.

Counsel for the landlord submitted that the landlord's son cannot wait for the matter to be decided in the B.C.S.C. before moving into the subject rental property. Counsel for the landlord submitted that the property is not in danger of being sold during the B.C.S.C. proceedings because of the Certificate of Pending Litigation filed against it.

Neither party provided relevant caselaw for consideration. Counsel for the landlord submitted that he was involved in a previous arbitration with the Residential Tenancy Branch that had a similar fact pattern and the Residential Tenancy Branch found that the matters were not substantially linked. The previous Residential Tenancy Branch decision was not provided to counsel for the tenant or the Residential Tenancy Branch for consideration.

I find that the matters are substantially linked because both actions relate to possession of the subject rental property. Counsel for the landlord drew a distinction between the purchase of the subject rental property and the possession/residency of the subject rental property; however, I find that the two are inextricably linked given that the tenant's agent currently resides in the subject rental property and intends to continue to reside in the subject rental property if the tenant is successful in their B.C.S.C. action for specific performance for sale of the property.

I find that while the Notice of Civil Claim filed by the tenant does not specifically state that the continued occupancy of the subject rental property is part of the relief sought, it is nonetheless clear that the continued occupation and possession of the subject rental property by the tenant's agent is a likely result if the relief sought is granted.

Pursuant to section 58(2)(d) of the *Act*, I find that I must not determine these disputes. Both applications for dispute resolution are therefore dismissed 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: May 06, 2022

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Residential Tenancy Branch