



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

Page: 1

## DECISION

Dispute Codes: MNETC FFT

### Introduction

The applicant sought compensation pursuant to section 51(2) of the *Residential Tenancy Act* (“Act”). The applicant also sought to recover the cost of the filing fee.

An arbitration hearing was convened on June 9, 2022 and in attendance were the applicant (Ms. M.), the respondents, and respondent Mr. S.’s legal counsel. The parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained. Because Residential Tenancy Branch decisions are published and made available to the public, the names of the parties are abbreviated herein for privacy reasons.

### Preliminary Matter: Removal of Second Applicant from Application

The applicant explained that the second named applicant (Mr. M.) should not, in fact, be a party to this legal dispute. As such, and at the suggestion and with the consent of the applicant, Mr. M. has been removed from this application. This removal is reflected in the style of cause—that is, the naming of the parties as they appear on the cover page.

### Preliminary Issue 1: Naming of First Respondent (Mr. S.)

In my careful review of the evidence and documentation submitted by the parties, the purchaser—the entity involved in the real estate transaction which ultimately led the applicant to file her application—was not named as a respondent in this dispute. The name of the purchaser, as it appears in a Contract of Purchase and Sale pertaining to the sale of a rental property in which the applicant was a tenant, is a corporation. That is, the purchaser is a limited company with articles of incorporation.

However, respondent Mr. S. as named in this application is the principal owner of the purchaser (a trucking company) and is not the legal entity that purchased the rental unit. And, while lifting the corporate veil would likely reveal a legal relationship between Mr. S. and the trucking company, the two are separate and distinct legal entities.

The applicant could not explain why, or provide any basis on which, she named the individual Mr. S. as the respondent instead of the actual purchaser, the trucking company. Ms. M. apologized for the incorrect naming and remarked that it was an oversight on her part. The applicant did not request to amend the application.

In legal disputes, especially ones such as this involving potentially large monetary awards, the importance of correctly naming a respondent cannot be overemphasized. *Residential Tenancy Policy Guideline 43. Naming Parties*, (ver. October 2015 available online at [www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl43.pdf](http://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl43.pdf)) outlines and summarizes the policy on this matter. I will paraphrase the relevant portions of that policy as follows.

Section 59(2) of the Act requires that an application made under the Act to include full particulars that is subject to the proceedings. Parties who are named as applicants and respondents must be correctly named. The policy states that (on page 1)

If any party is not correctly named, the director's delegate ("the director") may dismiss the matter with or without leave to reapply. Any orders issued through the dispute resolution process against an incorrectly named party may not be enforceable.

Further, if "the party is a limited liability company or a registered corporation, then the full legal name of the company should be used on the application, and include the designations such as Incorporated, Inc., Limited, Ltd., Corporation or Corp."

Last, the policy states that

It is up to the applicant to ensure that a party is properly named to ensure an enforceable order. Where the business is not properly named [. . .] the director may dismiss the application with leave to reapply unless the other party is present and consents to an amendment, or the director may issue the order using the name set out in the application.

Based on the facts before me, with a particular emphasis on the fact that the corporate purchaser (as defined and referenced in section 51(2) of the Act) was not named, and that a third-party individual was incorrectly named as a respondent, it is my finding that the application against the respondent Mr. S. must be dismissed *with* leave to reapply.

That is to say, the applicant is at liberty to file another Application for Dispute Resolution under section 59 of the Act. However, the correct names of any respondent must form part of any such future application.

Preliminary Issue 2: Liability of Second Respondent (Mr. B.)

An excerpt from the relevant testimony presents the following facts as they relate to the second respondent's role in this dispute.

On or about April 1, 2021, the respondent (Mr. B.) served a *Two Month Notice to End Tenancy For Landlord's Use of Property* (the "Notice") on the applicant. The respondent was, at the time of service of the Notice, the applicant's landlord.

A copy of the Notice was in evidence. Page two of the Notice indicated that the tenancy was being ended because "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit."

The Notice also indicates that a copy of the contract of purchase was attached. A copy of the Contract of Purchase and Sale document was submitted into evidence. Page two of the contract, under the third term "TERMS AND CONDITIONS", indicates a condition whereby the "SELLER MUST NOTIFY TENANT TO VACATE PROPERT [sic] NO LATER THAN MAY 31, 2021 - 1 PM BUYER TO HAVE VACANT POSSESSION UPON CLOSING". The applicant testified that the contract of purchase and sale was attached to the Notice. On May 31, 2021, the applicant vacated the rental unit.

Insofar as the testimony of the parties revealed, the second respondent's role was nothing more than that of a messenger delivering a notice to end the tenancy as directed by the purchaser, the trucking company. There is no evidence before me to find that the second respondent had any part to play after the purchaser took possession of the property on June 1, 2021.

As such, it is my finding that no liability may attach to the second respondent, insofar as any claim for compensation under section 51(2) of the Act is made. For this reason, it is my conclusion that the applicant's application against the second respondent, Mr. B., must be dismissed without leave to reapply. In other words, the applicant is not at liberty to make any further application against the second respondent.

Conclusion

**IT IS HEREBY ORDERED THAT:**

1. The application, specifically in relation to a claim for compensation against the first respondent (Mr. S.), is dismissed with leave to reapply.
2. The application, specifically in relation to a claim for compensation against the second respondent (Mr. B.), is dismissed without leave to reapply.
3. The claim to recover the cost of the application filing fee is dismissed, without leave to reapply.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: June 10, 2022

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Residential Tenancy Branch