



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MNRL, FFL

### Introduction

The Applicants applied to the Residential Tenancy Branch for Dispute Resolution [the 'RTB Dispute']. The Applicants ask me for the following orders against the Respondents.

1. Exclusive possession of the rental unit in favour of the Applicants, on the basis of either:
  - a. a 10-day Notice to End Tenancy for Unpaid Rent, issued on or about 6 April; or
  - b. a One-month Notice to End Tenancy for Cause, also issued on or about 6 April.
2. Payment of \$3,200.00 of unpaid rent.
3. Reimbursement for the \$100.00 filing fee for this application.

The Applicants appeared at the hearing on 12 June 2023, along with an advocate. The Respondents appeared by way of an advocate and agent.

### Preliminary Matter – Jurisdiction

Does the Director of the RTB have jurisdiction to hear this dispute?

The Applicants answer, 'yes', while the Respondents say, 'no'.

Further to an interim decision of mine dated 12 June, the Applicants submitted several documents to support their argument that the Director does have jurisdiction. These documents are:

1. three invoices for furnishings of a residential property that is the subject of this dispute [the 'House'];
2. a notice of bankruptcy in the name of one of the Respondents, and a statement of affairs in the name of the other of the Respondents [the 'Finance Records'];
3. a title certificate to a different property in the name of one of the Respondents;
4. bank statements of the Applicants from 2016 to 2023, showing deposits by the Respondents [the 'Payment Records'];
5. bank drafts used as a deposit to purchase the House and in the name of the Applicants only, and bank records of the Applicants in the amounts of the deposit [the 'Deposit Records'];
6. communications from a real-estate agent about the Respondents interfering with the sale of the House; and communications from a bank, detailing the financial harm to the Applicants caused by the Respondents' interference with the sale of the House [the 'Correspondence']; and
7. police records in which the Respondents describe themselves as 'tenants' in the House [the 'Police Reports'].

The Applicants also submitted several documents relating to the House and bearing only the names of the Applicants (*i.e.* not the names of the Respondents) [the 'Ownership Documents']:

1. tax notices;
2. insurance policy;
3. contract of purchase;
4. mortgage statements, showing biweekly mortgage payments of \$1,628.50; and
5. utilities payment plans and invoices.

In my interim decision, I also permitted the Respondents to make written submissions on the significance of the documents submitted by the Applicants, but the Respondents have declined to make such submissions.

### Background and Evidence

This dispute could be characterised as a family dispute, insofar as the Applicants are the children of the Respondents.

The Applicants told me that they bought the House in 2014. Before they moved in, they renovated the House. Then, in February 2015, they moved in.

About 10 months later, the Respondents contacted the Applicants, just before Christmas, to ask if they could come and live with them in the House. The Applicants agreed, but only if the Respondents lived in the House as tenants, and the Applicants were their landlords.

The Applicants said that the arrangement was that the Respondents were to live in the House paying \$1,600.00 rent *per* month [the 'Payments']. But, they said, initially the Respondents didn't pay the agreed-upon Payments: for all of 2016 and the first part of 2017, the Respondents were short. From January to March 2016, the Respondents failed to make any Payments at all. Then, from March 2016 and into the spring of 2017, they were \$600.00 short every month, only paying \$1,000.00. It wasn't until May 2017 that the Respondents started paying \$1,600.00, as agreed.

Both parties agree that the terms of this living arrangement were never written down.

The Respondents have a different understanding of the arrangement. They told me that the Applicants agreed to have the Respondents live with them in the House as family members, and that the Payments were not rent, but were contributions by the Respondents to the Applicants' mortgage. As a result, the Respondents told me they have an ownership interest in the House.

And because the Applicants are now trying to sell the House, the Respondents have filed an action in the Supreme Court of British Columbia [the 'BCSC'] in order (partly) to block that sale [the 'Court Action']. The Respondents submitted a copy of their claim that they filed to commence their Court Action.

In their Court Action, the Respondents make the following claims (in part):

1. they contributed \$50,000.00 toward a deposit on the House;
2. they have been paying the mortgage on the House since 2015, totalling \$153,000.00 of payments [the Payments referred to above];
3. they agreed with the Applicants that both parties would own equal shares of the House, and that the Applicants are holding the House in trust for the Respondents; and
4. they have paid thousands of dollars furnishing the House and repairing and maintaining it.

## Analysis

I have considered all the submissions made by the parties at the hearing on 12 June, and the documents to which they referred me during this hearing and afterward, pursuant to my interim decision.

Firstly, I will address the documents.

The Applicants say that the Finance Records prove that the Respondents do not have an ownership interest in the House: otherwise, the Finance Records would disclose such an interest, which they do not. And the Deposit Records show that the Respondents did not assist the Applicants in making a deposit on the purchase of the House.

The Applicants argue that the Ownership Documents also prove that the Respondents have no ownership interest in the House. I consider the Ownership Documents, effectively, neutral: they do not indicate what the significance of the Payments is, other than to confirm that the Respondents have no documents (beyond the Payment Records) to substantiate what they say is their accruing interest in the House.

The Applicants say that the Police Records reveal a concession by the Respondents that they are tenants, which in turn acknowledges the existence of a tenancy, and gives the Director jurisdiction over the RTB Dispute. But the Respondents (without the aid of legal counsel) telling police that they are tenants in the House is of little significance in determining jurisdiction. Since interacting with the police, the Respondents have asserted to the BCSC that they are owners.

The Correspondence does not assist me in determining jurisdiction: it merely indicates the collateral problems that the Respondents are causing for the Applicants by making ownership claims to the House.

The Deposit Records show that the Applicants made the deposit on the House – but they do not show the source of the monies for that deposit.

And I do not find that any of the other documents submitted by the Applicants assist in my assessment of the Director's jurisdiction.

What *does* assist me with this assessment? How am I to determine whether the Director has jurisdiction over this dispute?

I accept that section 58 (2) (d) of the *Residential Tenancy Act* [the 'Act'] is the determinative law: that section prohibits the Director from resolving a dispute if it is 'linked substantially to a matter that is before the [BCSC]'.

Therefore, I must ask whether the RTB Dispute is substantially linked to the Court Action.

This question, in turn, provokes another: what constitutes a 'substantial link'?

In their arguments to me, neither party directed me to any caselaw to support their positions. But I have considered *Gates v. Sahota*, 2017 BCSC 193. This case has helped me in analysing what constitutes a substantial link in these circumstances.

In that case, the court found that a dispute which one party argued was properly within the jurisdiction of the Director was, instead, properly within the jurisdiction of the BCSC. The court decided this because the dispute was substantially linked to the BCSC action for the following reasons:

1. both claims arose from the same set of facts;
2. both claims dealt with the same residential premises; and
3. both claims involved the same parties.

These links are also present in the dispute before me. Consider:

1. The parties are the same: the Applicants in this RTB Dispute are the respondents to the Court Action brought by the Respondents to this dispute.
2. The Court Action deals with the House, as does this RTB Dispute.
3. And both matters arise from the same set of facts, *i.e.* the parents living in the House of their children, and making monthly Payments to them.

Both the Court Action and this RTB Dispute ask for a determination of the same question: what is the significance of the Payments?

In effect, the RTB Dispute asks the Director to determine whether the Payments are rent or mortgage contributions. If they are mortgage contributions, then the Payments are a source of an interest in the House. If they are rent, then the Payments do not support an interest in the House.

In this light, it is clear that the Applicants effectively ask me to determine an issue that is in dispute before the BCSC: do the Respondents have an interest in the House because of the Payments they have made to the Applicants over the past seven years? This is

one of the questions that the Respondents have put to the BCSC as part of their Court Action. The Finance Records may assist the BCSC in determining this question. But it is, *per* section 52 (2) (d) of the Act, a question for the BCSC, and not for the Director.

And the issue of the Payments is inextricably intertwined with the issue of whether there is a tenancy: if the Payments are not rent, then there is unlikely a tenancy, in which case, again, the Director has no jurisdiction to resolve this dispute. But as the Respondents have effectively asked the BCSC to determine the nature of the Payments, I find that the Director must not interject into that determination.

None of the documents that the Applicants have submitted shift the jurisdiction over this dispute from the BCSC to the Director. None support the notion that the Court Action and the RTB Dispute are not substantially linked.

### Conclusion

Having determined that the BCSC has jurisdiction over this matter by virtue of the Court Action, I dismiss this application *per* section 58 (2) (d) of the Act, with leave to re-apply.

Accordingly, I cancel the continuation of this hearing, scheduled for 23 June.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 21 June 2023

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Residential Tenancy Branch