



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, RPP, MNDCL, FFL

### Introduction

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

1. Payment of \$34,000.00 compensation for monetary loss or money owed.
2. Return of tenants' personal property taken by the landlords.

The landlords also applied to the RTB for Dispute Resolution. The landlords ask me for the following orders against the tenants.

1. Payment of \$35,000.00 compensation for monetary loss or money owed.
2. Reimbursement for the \$100.00 filing fee for this application.

The landlords appeared at the hearing on 10 July 2023 by way of an agent. The tenants also appeared.

### Preliminary Matter – Jurisdiction

Despite having brought this application, the landlords now tell me that the Director of the RTB does not have the jurisdiction to hear their application, nor does the Director have jurisdiction to hear the tenants' application. The landlords say that this is so because:

1. the Director had previously issued an order of possession and a monetary order against the tenants;
2. the landlords have since begun enforcement proceedings against the tenants pursuant to both orders; and
3. the enforcement proceedings concerning the order of possession have been filed in the Supreme Court of British Columbia [the 'BCSC'].

The landlords told me that a bailiff attempted to enforce the order of possession, pursuant to a writ of possession issued by the BCSC, but that the bailiff encountered problems with the tenants while doing so. And so part of their application to the RTB for \$35,000.00 is to recover the cost of having the bailiff execute this writ.

And the tenants told me that their claim for \$34,000.00 in compensation deals with the actions of the bailiff in executing that BCSC writ.

For their part, the tenants assert that they have studied law and appeared at all levels of court, including the Supreme Court of Canada, and that they well understand the issue of jurisdiction. They also told me that they have begun their own action in the BCSC against agents of the landlords regarding the sale of this rental unit, and that the court informed the tenants that the landlords should properly be added as defendants to this lawsuit.

### Analysis

I have considered all the statements made by the parties and the documents to which they referred me during this hearing. And I have considered all the arguments made by the parties.

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 these applications are substantially linked to the suits before the BCSC.

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

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 who appear before me are also litigants in two separate actions before the BCSC.
2. Both BCSC actions deal with the same rental unit as these applications to the RTB.
3. And both these applications and at least one of the BCSC actions involve the same set of facts, *i.e.* the bailiff's execution of the writ issued by the BCSC.

I am satisfied that these applications are substantially linked to at least one of the BCSC actions dealing with this tenancy, and therefor it is the BCSC who have jurisdiction over this dispute.

### Conclusion

Having determined that the BCSC has jurisdiction over this dispute, I dismiss both applications *per* section 58 (2) (d) of the Act, with leave to re-apply.

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

Dated: 9 August 2023

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Residential Tenancy Branch