



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1232369 B.C. LTD  
MACLEAN HOMES (EDGE 4) LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ERP, FFT; CNE, LRE, OLC, FFT

### Introduction

This hearing dealt with the applicant's first application, filed on November 9, 2023, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order requiring the respondents to make emergency repairs to the property, pursuant to section 33; and
- authorization to recover the \$100.00 filing fee paid for his application, pursuant to section 72.

This hearing also dealt with the applicant's second application, filed on November 24, 2023, pursuant to the *Act* for:

- cancellation of the respondents' 1 Month Notice to End Tenancy for End of Employment, dated November 16, 2023, and effective on December 31, 2023 ("1 Month Notice"), pursuant to section 47;
- an order to suspend or set conditions on the respondents' right to enter the rental unit, pursuant to section 70;
- an order requiring the respondents to comply with the *Act*, *Residential Tenancy Regulation*, or tenancy agreement, pursuant to section 62; and
- authorization to recover the \$100.00 filing fee for his application, pursuant to section 72.

The applicant, the applicant's support person, and the respondents' agent ("respondent") attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing lasted approximately 60 minutes from 9:30 a.m. to 10:30 a.m.

The respondents intended to call a witness, “witness MV,” who was excluded from the outset, left the hearing at 9:36 a.m., did not return to testify, and did not hear evidence from either party.

All hearing participants confirmed their names and spelling. The applicant and the respondent both provided their email addresses for me to send copies of this decision to both parties after this hearing.

The applicant confirmed that his support person had permission to assist him at this hearing. He said that she would not testify at this hearing, but she was only there to support him.

The respondent confirmed that he is the president of the respondent company MHL (“respondent company”) named in both applications. He said that the respondent company owns the property. He stated that he had permission to represent the respondent company. He provided the property address.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle, and they wanted me to make a decision. Both parties were given multiple opportunities to settle at the beginning and end of this hearing, discussed settlement, and declined to settle.

The respondent confirmed receipt of the applicant’s first application.

The respondent stated that he did not serve the respondents’ evidence to the applicant. The applicant stated that he did not receive any evidence from the respondents. I informed both parties that I could not consider the respondents’ evidence at this hearing or in my decision because it was not served to the applicant, as required.

The applicant stated that a future RTB hearing involving these parties and this property, is scheduled for February 15, 2024, regarding his second application. The file number for that hearing appears on the cover page of this decision. I notified both parties that the future hearing may be cancelled, depending on the outcome of this decision. Accordingly, the future hearing is cancelled and neither party is required to attend the future hearing, due to the determination made in this decision.

### Issue to be Decided

Does the RTB have jurisdiction to decide the applicant's two applications, pursuant to the *Act*?

### Background and Evidence

While I have turned my mind to the applicant's documentary evidence and the testimony of both parties at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the jurisdiction claim, and my summarized facts and findings are set out below.

I raised the issue of jurisdiction at the outset of this hearing. I asked both parties to make submissions regarding jurisdiction only, at this hearing. I did not hear any substantive evidence regarding the merits of the applicant's two applications at this hearing.

Both parties agreed to the following facts. The applicant began occupying the property from November 22, 2021, to the present date. There is no written tenancy agreement between both parties. The applicant was an employee of the respondents, until September 9, 2023, when his employment was terminated by the respondents. There was no rent or security deposit required to be paid from the applicant to the respondents. There has been no rent paid from the applicant to the respondents since the applicant first began occupying the property on November 22, 2021. The only costs that the applicant was required to pay, to occupy the property, is for insurance, hydro electricity, and gas. The applicant was required to maintain the property, while occupying it, and complete employment tasks for the respondents, while he was employed by them. The respondents have asked the applicant to vacate the property, since his employment has ended.

## Analysis

The following sections of the *Act* state, in part:

### *Definitions*

#### *1 In this Act:*

*"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;*

*"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:*

*(a) a security deposit;*

*(b) a pet damage deposit;*

*(c) a fee prescribed under section 97 (2) (k) [regulations in relation to fees];*

*"rental unit" means living accommodation rented or intended to be rented to a tenant;*

*"security deposit" means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property, but does not include any of the following:*

*(a) post-dated cheques for rent;*

*(b) a pet damage deposit;*

*(c) a fee prescribed under section 97 (2) (k) [regulations in relation to fees];*

*"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;*

*"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;*

*What this Act applies to*

*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.*

*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]...*

*Requirements for tenancy agreements*

*13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.*

*(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:*

- (a) the standard terms;*
- (b) the correct legal names of the landlord and tenant;*
- (c) the address of the rental unit;*
- (d) the date the tenancy agreement is entered into;*
- (e) the address for service and telephone number of the landlord or the landlord's agent;*
- (f) the agreed terms in respect of the following:*
  - (i) the date on which the tenancy starts;*
  - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;*
  - (iii) if the tenancy is a fixed term tenancy, the date on which the term ends;*

- (iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;*
- (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;*
- (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;*
- (vi) which services and facilities are included in the rent;*
- (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.*

I find that the RTB does not have jurisdiction to decide the applicant's two applications, since they are not residential tenancy disputes, pursuant to the *Act*.

Neither party provided a copy of a written tenancy agreement, written contract, or other sufficient documentation indicating this is a tenancy, at the property, between the applicant and respondents, as "landlords" and "tenant." Neither party provided sufficient documentation referring to the payment of rent, the services or facilities included in rent, the payment of a security deposit, or the periodic or fixed term of the tenancy, or other standard terms of a tenancy agreement, as required by section 13 of the *Act*, above.

I find that the applicant has not paid any rent or a security deposit to the respondents to occupy the property. Neither party provided a copy of sufficient documentation to prove same. I find that there is no agreement between the parties for the respondent to occupy the property for a fixed or periodic term.

I informed the applicant that he stated the following on the online RTB dispute access site, where he was required to complete details regarding "rent," in his first application:

*"Rent: \$0.00, Rental arrangement was part of property sales agreement"*

Both parties agreed that the applicant never paid any rent to the respondents, for over two years of occupying the property from November 22, 2021 to the date of this hearing on November 30, 2023. I find that both parties failed to provide sufficient documentary evidence, such as bank records, rent receipts, e-transfer confirmations, certified cheques, cancelled cheques, bank drafts, or other sufficient documents, confirming that the applicant paid any rent to the respondents. I find that both parties failed to provide

sufficient documentary evidence that the applicant had an agreement to pay rent to the respondents, to reside at the property for a period of time, as a tenant and landlords under a tenancy agreement.

Both parties agreed that the applicant was an employee of the respondents until his employment was terminated by the respondents on September 9, 2023. Section 4(d) of the *Act* excludes living accommodation included with premises that are primarily occupied for business purposes. Further, the RTB does not have jurisdiction to determine labour or employment contract disputes.

In his second application, the applicant applied to dispute a 1 Month Notice for end of employment. On that notice, the reason indicated by the respondents is:

*“Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.”*

The above specifically references an employment relationship between the applicant and respondents. However, simply because the respondents issued a 1 Month Notice using an RTB form, is not determinative that these are residential tenancy disputes, under the *Act*. A determination of jurisdiction is made based on the facts and evidence. Although I have referenced the second application, since the applicant raised it during this hearing, I have not made any determination on the merits of that application, only jurisdiction.

The RTB only determines residential tenancy disputes between landlords and tenants, under a tenancy agreement, pursuant to the *Act*.

For the above reasons, I decline to exercise jurisdiction over the applicant's two applications. I find that the applicant's two applications are not residential tenancy disputes, that can be determined by the RTB, pursuant to the *Act*. Nothing in my decision prevents either party from advancing their claims before a Court of competent jurisdiction.

### Conclusion

I decline to exercise jurisdiction over the applicant's two applications.

I make no determination on the merits of the applicant's two 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: December 07, 2023

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Residential Tenancy Branch