



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	CNL, OLC, FFT	(Tenant's Application)
	OPC, FFL	(Landlords' Application)

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application, filed on September 12, 2018, he sought to cancel a 2 Month Notice to End Tenancy for Landlord's Use issued on August 29, 2018 (the "Notice"), an Order that the Landlord comply with the *Residential Tenancy Act*, the *Regulation* or the tenancy agreement and recovery of the filing fee. In the Landlord's Application filed on September 18, 2018 the Landlord sought an Order of Possession based on the Notice as well as recovery of the filing fee.

The hearing was conducted by teleconference at 9:30 a.m. on October 30, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue—Landlord's Name

The Landlord's named their lawyer's law firm on the Application for Dispute Resolution.

The Tenant named his brother, B.C. as the Landlord on his Application for Dispute Resolution.

Introduced in evidence was a residential tenancy agreement signed by the Tenant and the Tenant's parents, R.C. and B.C. The Landlord named on the Tenant's Application, also with the initials B.C., issued the Notice in his capacity as Power of Attorney for their parents. He confirmed that his parents were unaware of the Notice and unaware of the sale of the rental property.

Pursuant to section 64(3)(c) I amend the parties' Applications to name the Landlord as the parents, R.C. and B.C., the named Landlords on the residential tenancy agreement filed in evidence.

Preliminary Issue—Jurisdiction

The Tenant testified that he commenced proceedings in the B.C. Supreme Court on October 4, 2018. The file number is noted on the unpublished cover page of this my Decision. The Tenant stated that the nature of his claim relates to the validity of the Power of Attorney granted to his brother, B.C., who was named as the Landlord on the Notice.

Counsel for B.C. confirmed that he represents B.C. as power of attorney for R.C. and B.C. the Landlords named on the tenancy agreement and the property owners.

Counsel for B.C. also stated that the rental property had sold with a closing date of October 31, 2018.

As I informed the parties during the hearing I have delegated authority under the *Residential Tenancy Act*. I do not have inherent jurisdiction like a B.C. Supreme Court Justice and I must only deal with matters which fall under the *Residential Tenancy Act*.

Section 4 and section 58 of the *Act* deal with issues of jurisdiction.

Section 4 lists matters over which I lack jurisdiction.

Section 58(2)(c) of the *Residential Tenancy Act* provides that I may decline jurisdiction if the dispute before me is "is linked substantially to a matter that is before the Supreme Court."

In this case the validity of the Power of Attorney is before the B.C. Supreme Court. As the Notice was issued by the brother in his capacity as Power of Attorney, I find that this

directly relates to the validity of the Notice, as if the brother was not authorized to act as Power of Attorney, he may also not have the authority to issue the Notice.

As I stated during the hearing, even in the event I had assumed jurisdiction, the parties agreed that the purchasers of the property did not ask the sellers, in writing, to give notice to end the tenancy as required by section 49(5). For clarity I reproduce the relevant portions of that section as follows:

- (5) A landlord may end a tenancy in respect of a rental unit if
 - (a) the landlord enters into an agreement in good faith to sell the rental unit,
 - (b) all the conditions on which the sale depends have been satisfied, and
 - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

As such, even in the event I had assumed jurisdiction, it is likely I would have canceled the Notice as the Notice fails to comply with section 49(c) of the *Act*.

Conclusion

I decline jurisdiction to hear the matter pursuant to section 58(2)(c) of the *Residential Tenancy Act* as the matter is linked substantially to a matter that is before the B.C. Supreme Court.

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: November 7, 2018

Residential Tenancy Branch