



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the Applicant's Application for Dispute Resolution to cancel a One Month Notice to End Tenancy for Cause.

The Applicant and Respondent appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

At the commencement of the hearing, I advised the parties that it appeared the Residential Tenancy Act did not apply to their dispute.

As a preliminary issue, I heard testimony from both parties with respect to jurisdictional issues in the event I found jurisdiction to resolve this dispute. For the purposes of this decision, I will refer to the parties as Applicant and Respondent.

### Issue(s) to be Decided

1. Does the *Residential Tenancy Act* apply to this dispute and do I have jurisdiction to resolve this dispute?
2. Has the Applicant established an Order cancelling the Notice to End Tenancy for Cause and to recover the filing fee?

### Background and Evidence

The undisputed testimony from both parties indicated that the Respondent holds a tenancy agreement in her name only with an unknown and non-participating third party Landlord (Landlord) and that the Applicant's status is that of a roommate, or "Occupant."

Both parties confirmed that the Applicant pays rent unto the Respondent, who in turn pays the monthly rent to the Landlord.

There was no evidence or testimony to support that the Applicant entered into a Tenancy Agreement with the Landlord, or have her name added as co-Tenant.

The Respondent did issue a Landlord's One Month Notice to End Tenancy for Cause to the Applicant, and testified that she did so as she gave her notice to end tenancy to the Landlord, effective October 31, 2010.

### Analysis

In order for the Applicant to succeed in this application, the Applicant must show that the *Residential Tenancy Act* applies. In order to find the Act applies, I must be satisfied that the parties entered into a tenancy agreement and that the parties had a landlord and tenant relationship.

The *Act* defines a tenancy agreement as "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."

The *Act* defines a landlord, in part, as follows:

"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.....

I accept the evidence that the Respondent supplemented her obligation to pay rent to the Landlord by having a roommate and that no tenancy agreement ever existed or was contemplated between the “Roommate” (Applicant) and the Tenant (Respondent). As a result, I find that the status of the Applicant was that of “Occupant,” as defined in RTB Policy Guideline 13.

In addition, I find that the Respondent cannot meet the definition of a landlord and that the Applicant had no legal relationship with the Landlord. On this basis I find the legislation has contemplated this type circumstance and the undisputed testimony confirms no joint tenancy existed.

In light of the above, I decline to find jurisdiction to resolve this dispute. The parties are at liberty to seek the appropriate legal remedy to this dispute.

### Conclusion

I do not find the *Residential Tenancy Act* applies to this dispute and I have declined 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: October 15, 2010.

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Dispute Resolution Officer