



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPT

### Introduction

The Applicant filed this Application for Dispute Resolution, requesting an order of possession for the rental unit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues(s) to be Decided

Is the Applicant entitled to an order of possession for the rental unit?

### Background and Evidence

The Applicant testified that he had lived in the subject rental unit for the past two and half years, with his mother, who recently passed away.

The Applicant's mother was the only Tenant listed throughout the written evidence supplied by the Landlord, including the tenancy agreement and various applications made by the Tenant to qualify for subsidized housing. I note, the Tenant has not listed any other person occupying the rental unit with her in any of these documents.

The Applicant provided no written evidence to support he had been a tenant in the rental unit, nor any written evidence to prove he represented the estate of the Tenant.

The Applicant and his Advocate testified that a written Notice to End Tenancy for unpaid rent had been served at the rental unit. No copy of this Notice was provided in evidence. The Applicant and his Advocate testified he had tried to pay the rent due but the Landlord refused the payment.

An Agent for the Landlord testified that the Notice to End for unpaid rent was issued in the name of the estate of the deceased Tenant. The Agent for the Landlord testified

that the Applicant did not bring cash or offer other immediate payment of the rent. The Agent testified that she was contacted by a worker on behalf of the Applicant who was enquiring if the Landlord would accept the Applicant as a Tenant. The Agent for the Landlord explained that the Landlord does not want the Applicant to become a tenant.

The Applicant testified the estate would pay the rent if the Landlord allowed him to stay in the rental unit.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Application must be dismissed. I find that the Applicant is an occupant of the rental unit and therefore has no rights or obligations under the tenancy agreement as defined in the Act. Policy Guideline 13 sets out that,

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

Here the Landlord does not agree to enter into a tenancy agreement to include the Applicant. Therefore, the Applicant is an occupant, has no right to occupy or possess the rental unit, and he must vacate the rental unit.

I also note that under section 1 of the Act, the definition of “tenant” includes the estate of a deceased tenant. Therefore, the Landlord must end the tenancy with the estate of the Tenant in accordance with the Act.

### Conclusion

The Application is dismissed as the Applicant has no rights or obligations under the tenancy agreement.

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 02, 2010.

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Dispute Resolution Officer