



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, OPC, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession for unpaid rent and for cause and to recover the filing fee for this proceeding.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the “hearing package”) by registered mail on November 3, 2010. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord’s hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenants in attendance.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy for unpaid rent or for cause?

### Background and Evidence

At the beginning of the hearing the Landlord said there is no tenancy agreement and no terms of a tenancy agreement were established between the Landowner and the Occupant. She said there was no security deposit discussed or paid by the Occupant, rent was talked about as being work done by the Occupants, but no amount or terms were mentioned. As well the Land owner said she did not give the Occupants notice when she visited the Occupants unit. The Landlord continued to say that she did sign a partnership agreement with the Occupants which allowed them to move the modular home on to the property, but the Occupants had broken that agreement and it was not valid anymore. She said the occupants have pigs and chickens on the property which was not part of the partnership agreement or any agreement that they had and it is in contravention of the municipal bylaws. The Landowner said the Occupants have not paid her any money or done any agricultural work for her since the home was moved on the property in March, 2010.

The Landowner had three witnesses testify that confirmed her testimony.

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The Occupant said that he agreed there was no written tenancy agreement, but he believed they had a verbal tenancy agreement in which the Occupants would trade work for rent and that the partnership agreement authorized them to move the modular home on to the property. The Occupant said that he was unable to do any work for the Landowner as he was not allowed to work in Canada by order of Citizenship and Immigration Canada. He was applying for his landed immigrant status and until he received it he cannot work. The Occupant said his partner M.W. did do work for the Landowner as the rent payment. The occupant said they pay the utilities and that the utilities are in their names.

## Analysis

Section 9 of the Residential Tenancy Policy Guidelines says for a tenancy to exist the following terms must be met by the parties in the agreement.

1. A tenancy must include exclusive possession of the site for a term of time.
2. Rent is defined and paid for exclusive possession for a term of time.
3. If a security deposit is not paid, it may not be considered a tenancy.
4. If the owner retains access or control over, portions of the site it may not be considered a tenancy.
5. If the occupier pays property taxes and utilities but not a fixed amount for rent it may not be considered a tenancy.
6. If the owner retains the right to enter the site without notice it may not be considered a tenancy.

From the Landowners and the Occupants testimony and written evidence submitted I find the verbal agreement nor the partnership agreement define the living situation between the parties and does not establish a tenancy between the Occupants and the Landowner. To establish a tenancy the parties must specifically definable the rent and paid it, a security deposit can be defined and paid, the Occupant must have exclusive possession of the site, the owner must give notice to the Occupants when she attends the site or the Occupants home and she said she does not and the Landowner has not released control of the site to the Occupants. Consequently I find that the parties have **not established a tenancy** and therefore the *Residential Tenancy Branch* **does not have jurisdiction over this dispute**. I dismiss the Applicants application with leave to reapply.



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## Conclusion

I dismiss the Applicants application as the dispute does not fall within the jurisdiction of the *Residential Tenancy Act*. The application is dismissed without leave to reapply.

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*.

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