



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, OPT, RR, O

Introduction

This hearing was scheduled to hear the tenants' application for a Monetary Order for the cost of emergency repairs, for an Order of Possession for the rental unit and to allow the tenant to reduce his rent for repairs, services or facilities agreed upon but not provided.

No hearing was held today as it was determined at the outset that the tenant and landlord are mother and son who shared the house including the kitchen and bathrooms. The mother also stated that she has never had a tenancy in place with her son but allowed him to move back home 11 years ago. Since that time he has given her money each month for food up until she moved out last year and since then he has paid the utilities and taxes. She states he has not paid rent and it was a family arrangement.

The tenant agrees he did share the house with his mother but states the money he gave her was for rent. However he has provided no receipts to show this and no tenancy agreement is in place. In the absence of a written tenancy agreement, the burden of proving that an agreement exists lies with the person making the claim; however, in this case it is just the applicants' word against that of the respondent and when it is just one persons word against that of the other that burden of proof is not met.

I also refer both parties to s. 4(c) of the *Residential Tenancy Act*, which states the *Act* does not apply to living accommodation in which a tenant shares bathroom or kitchen facilities with the owner of that accommodation. This further reinforces that this is a

family arrangement. Consequently, as the *Act* does not apply in this matter I decline jurisdiction.

Both parties are at liberty to seek alternative legal remedy.

Conclusion

The tenants' 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*.

Dated: March 15, 2011.

Residential Tenancy Branch