



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

### Background and Evidence

The rental unit consists of a single detached home. The landlord testified that the tenant is her brother. She stated that pursuant to a verbal agreement, the month to month tenancy started in March 2009. The rent is \$1500.00 payable on the first of each month. The landlord stated that the last payment she received for rent was in November 2010 for \$500.00. She said that she kept waiting because the tenant is her brother and that he was in a bad financial situation, but that she let this matter go for too long.

The tenant argued that there was no written agreement and therefore does not consider that he is under a tenancy agreement. He testified that he purchased the house in 1994

but that the bank would not renew his mortgage in 2009. He said that he entered into a verbal agreement with his sister to transfer the house into her name, and that part of the agreement included co-owning and sharing the mortgage payment of \$1500.00 in half. He stated that his father paid the rent and deposited the money directly into the landlord's account for January, February and March 2011. The tenant said that he paid \$750.00 in the same fashion for the months of April, May, June and July 2011. The tenant said that he is in the process of filing civil proceedings in order to secure his portion of equity into the property.

The landlord said that she lent her father the money in question, and that regardless of these family arrangements, she now has a tenant who does not pay rent. She said that she lived in the rental unit until the summer of 2010, and that she was forced to move out because of the use of drugs and lack of privacy.

In her documentary evidence, the landlord provided two copies of 10 Day Notice to End Tenancy dated September 19<sup>th</sup>, 2011 for unpaid rent in August and September 2011.

### Analysis

The *Residential Tenancy Act* defines in part "tenancy agreement" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit.

I am satisfied on the parties' testimony that they entered in a verbal agreement concerning this tenancy. It was not disputed however, that the tenant originally owned the property, and that agreements, whether verbal or written, were made in 2009 and that the tenant claims to hold an ownership interest in the property. At question is not whether there is a tenancy agreement, but whether that agreement comes under jurisdiction of the *Residential Tenancy Act*.

The evidence established that the tenancy is tied to a financial interest by the tenant, the terms of which have yet to be heard by the courts once the tenant files his application.

Section 27 of the *Residential Tenancy Policy Guidelines* states in part:

*“If the tenant takes an interest in the land and buildings which is higher than the right to possession, such as part ownership of the premises, then a tenancy agreement may not have been entered into. In such a case the arbitrator may again decline jurisdiction because the Acts would not apply.”*

The landlord and the tenant co-habited in the unit as part of a verbal agreement when the property was transferred in the landlord's name in 2009. At that time, the tenant paid the down payment from the equity accrued since the date of purchase in 1994 and the mortgage was written under the landlord's name; the tenant further stated that he investment a substantial amount of money into renovations. This was made in order to prevent the property from being repossessed by the bank. The landlord moved out in the summer of 2010, again under verbal understandings concerning the tenant's obligation to pay the full mortgage.

Based on the above I find that this tenancy was a family arrangement to prevent the loss of property. I cannot accept jurisdiction if the tenant has ownership interest and on the evidence I am not convinced that he does not. This will be determined by the courts once the tenancy has filed his application as stated at the hearing.

### Conclusion

The landlord's application is dismissed as the tenancy does not fall under the Act.

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 21, 2011.

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Residential Tenancy Branch