



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION AND REASONS AND DECISION ON TENANT'S APPLICATION**

Dispute Codes      OLC

### Introduction

This review hearing dealt with the tenant's successful application for a review of the Decision of December 13, 2011, which was based upon the tenant's Application for Dispute Resolution requesting the landlord's compliance with the Residential Tenancy Act (the "Act").

The Decision of December 13, 2011, dismissed the tenant's application as the Dispute Resolution Officer (DRO) found that the Residential Tenancy Act did not apply to this dispute pursuant to Section 4(g)(vi) of the Act.

The tenant applied for and was granted a review consideration, and I was assigned and conducted a new hearing on this application. The tenant's review application was granted by the reviewing DRO on the basis the Decision may have been different if the original DRO had the tenant's evidence, which the tenant did not submit with his application for dispute resolution, before him while making his determinations.

At the outset of the hearing, the parties were advised that this was a new hearing, although the Decision of December 13, 2011, was not necessarily incorrect and could be reinstated.

The parties were further advised that the issue of jurisdiction would still be initially explored and that the same Decision may still be reached.

I heard testimony from both parties with respect to jurisdictional issues and the basis for the tenant's request for an order requiring the landlord to comply with the Act in the event I found jurisdiction to resolve this dispute.

The hearing process was explained to the parties. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence, and make submissions to me.

I note that the landlord's agent presented that she was unsure if the Residential Tenancy Act applied to this dispute.

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 entitlement to an order requiring the landlord to comply with the Act?

Background and Evidence

**Evidence and testimony regarding jurisdiction:**

I reviewed the relevant evidence submitted by the tenant, which included a copy of the Residential Tenancy Agreement and a listing of supportive housing in the city.

I heard testimony from the landlord that the residential property is a multi-story building created and funded by provincial and municipal authorities to provide housing for the homeless and to provide programs for persons with addictions and mental illness.

The landlord submitted that the residents are offered supportive housing programs, such as nursing services seven days a week, 24 hours a day, meals, medication, home support and ongoing programs designed to rehabilitate or assist persons with their addictions.

The landlord further submitted that the landlord is required by municipal bylaw to check on residents every 24 hours. I note that the Residential Tenancy Agreement submitted by the tenant states that the landlord is required to check on residents if they have not been seen in 24 hours.

The tenant submitted that the Residential Tenancy Act has jurisdiction over this dispute because he has not used the rehabilitative or therapeutic services offered by the landlord. Upon query, the tenant stated that he has taken advantage of the meals offered by the landlord.

### Analysis

In order for the applicant/tenant to succeed in this application, the applicant/t must show that the *Residential Tenancy Act* applies.

Section 4 (g) (v) of the Act states that the Act does not apply to living accommodation in a housing based health facility that provides hospitality support services and personal health care.

At the hearing, the parties confirmed that the landlord provides nursing services and meals.

### Conclusion

In light of the above, I find that the living accommodation meets the above criteria for exclusion under the Act, and I therefore decline to find jurisdiction to resolve this dispute. The parties are at liberty to seek the appropriate legal remedy to this dispute.

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: January 27, 2012.

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Residential Tenancy Branch