



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, RPP

### Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause, to order the landlord to comply with the *Act* and return of the tenant's personal property.

The tenant participated in the conference call hearing but the landlord did not. The tenant presented evidence that the landlord was served with the application for dispute resolution and notice of hearing in person. I found that the landlord had been properly served with notice of the tenant's claim and the date and time of the hearing and the hearing proceeded in their absence.

### Issue(s) to be Decided

Is the tenant entitled to any of the above under the *Act*.

### Preliminary Issue(s) to be Decided

Before considering the merits of this Application for Dispute Resolution I must determine whether I have jurisdiction in this matter.

### Background and Evidence

This tenancy began March 2011 with monthly rent of \$375.00, the tenant could not confirm if a security deposit was paid.

The tenant testified that he was one of seven roommates in the rental property. The tenant stated that he paid his rent to his brother who in turn paid the landlord. The tenant stated that he did not enter into a tenancy agreement with the landlord.

The tenant stated that his brother had locked him out of the house and refused to let him back in and that the tenant had to find alternate housing. The tenant stated that his brother had returned some but not all of his personal belongings and still had possession of the tenant's bed, couch, television, love seat, photos, clothing and other personal items.

### Analysis

Section 2 of the *Residential Tenancy Act* states that the Act applies to all tenancy agreements, except those listed in section 4. This arrangement is not one of the tenancies listed in section 4.

"Tenancy agreement" is defined as an agreement between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities.

"Landlord" is defined as the owner, anyone acting on behalf of the owner, the estate or beneficiaries of the owner, or "a person, other than a tenant occupying the rental unit, who is entitled to possession of the rental unit and exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit". (emphasis added)

The respondent in this case is "a tenant occupying the rental unit". As such, he is not included in the definition of "landlord" and any agreement he makes with a roommate is specifically excluded from the operation of this Act.

Residential Tenancy Policy Guideline **13. Rights and Responsibilities of Co-tenants** speaks in part to:

*This Guideline clarifies the rights and responsibilities relating to multiple tenants renting premises under one tenancy agreement.*

*A tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.*

### **Occupants**

*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.*

The tenant's application is dismissed in its entirety as his claim does not fall under the Act.

Conclusion

I hereby dismiss the Tenant's Application for Dispute Resolution, as his claim does not fall under the *Act*. The Tenant has the option of pursuing his claim through the Small Claims Court of British Columbia.

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: February 1, 2012

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Residential Tenancy Branch