



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

OLC, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant for an order to compel the landlord to comply with the Act.

The applicant named two individuals as respondents and identified as co-landlords.

Both of the persons who were named as “landlord” appeared. The tenant appeared and brought a witness. The applicant and respondents all gave testimony in turn.

### **Issue(s) to be Decided**

The issue to be determined based on the testimony and the evidence is whether an order to force the landlord to comply with the Act is warranted.

### **Preliminary Matter**

At the outset of the hearing the owner of the rental unit, who was named as one of the respondents, testified that the other individual named as respondent and identified as co-landlord, was not a landlord as defined by the Act. The owner testified that this other respondent had previously been allowed to occupy his suite as his guest. The owner of the unit stated that this man also had no status as a tenant, but merely occupied the suite as he was in a hardship situation. The owner testified that, in any case, his guest had permanently vacated the unit and no longer resides there even as an occupant at the present time.

This was confirmed by the other named respondent, who testified that he had never been a co-landlord with the owner. The respondent stated that he had previously occupied the residence at the owner’s invitation and became a guest of the owner because of his personal situation. The respondent /occupant stated that he had never been in a tenancy relationship with the owner.

He further testified that, during his occupancy of the unit, the applicant, who is now purporting to be a tenant, had moved in with him and occupied the rental premises sharing the accommodation with his permission. The respondent /occupant stated that he had subsequently vacated the unit and is now living in another location.

With respect to the applicant, the owner testified that she has remained living in the unit without authorization. The owner testified that there was never any tenancy agreement with the applicant and there had never been a landlord-tenant relationship of any kind with her. According to the landlord, the applicant merely remained occupying the suite after his friend had vacated and has refused to leave. The owner stated that the applicant is attempting to avoid having to move out by claiming tenancy rights that do not exist.

The landlord testified that the applicant is merely the current occupant of the rental unit who is living the unit without the owner's authorization and against the owner's wishes.

The applicant disputed the above allegations. The applicant testified that she had a tenancy relationship with the owner by virtue of the fact that she shared the residence with a person who was a co-landlord with the owner, and this person is also named as respondent. The applicant testified that she did not pay rent, but worked in lieu of rent for both the owner/landlord and the co-landlord.

The applicant testified that the rental unit was still being shared with the respondent as confirmed by the fact that his possessions remain in the unit and she pointed out that he used the unit's address as his mailing address for the purpose of the hearing.

The applicant provided a witness who she stated would confirm that the personal possessions of the other occupant were still in the unit. However, this testimony about the remaining possessions and with respect to the address used by the other occupant, was accepted and the witness did not have to testify.

The question that had to be resolved before the matter could be heard was:

Is the applicant a tenant and is there a landlord/tenant relationship with either of the respondents under the Act?

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and a landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) *of the Act*. (my emphasis)

*This section provides that a person may apply for dispute resolution in respect of the rights, obligations and prohibitions under the Act or terms of a tenancy agreement*

that: (i) are required or prohibited under the Act, or (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

The Act defines "*rental unit*" as living accommodation rented or intended to be rented to a tenant.

The Act defines "*landlord*", to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord:

- (i) permits occupation of the rental unit under a tenancy agreement, or
- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

The Act defines "*tenancy*" as a tenant's right to possession of a rental unit under a tenancy agreement. Under the Act "*tenancy agreement*" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

In this instance, I find that there was no tenancy agreement between the applicant and the owner whatsoever. I therefore find that the applicant has no status under the Residential Tenancy Act.

I accept the owner's testimony that the other person named as respondent was neither a tenant of the owner, nor a co-landlord. During his occupation of the residential unit, I find that the other respondent was only an occupant.

I do, however, accept the applicant's testimony that personal possessions of the former occupant, with whom she shared the unit, had been left in the unit and that he had used the suite address for his mailing address. That being said, I find that this is not a relevant factor in determining whether or not the Residential Tenancy Act applies.

Although the applicant has apparently occupied the premises in question and continues to do so, I find that the applicant is not a tenant and never was a tenant. Therefore I find that the applicant has no tenancy rights under the Act.

Moreover, I find as a fact that the Residential Tenancy Act does not apply to the relationships between any of these three participants, including the respondent/owner, the former occupant who shared the unit with the applicant, nor the current occupant/applicant.

Having found that no tenancy exists as defined by the Act, I find that the issue under dispute does not fall under the authority of the Residential Tenancy Act. I therefore find

that this application cannot proceed through the dispute resolution process because I have no authority to hear this matter.

I hereby decline jurisdiction to hear this application as the dispute before me does not fall within the governance of the Residential Tenancy Act . The parties are therefore at liberty to seek remedies in another legal forum.

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: July 19, 2012.

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Residential Tenancy Branch