



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing was scheduled to deal with a tenant's application to cancel a Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural matters

Before proceeding to hear the basis for issuance of the Notice to End Tenancy, I determined it necessary to make a finding as to whether the applicant is a tenant under a tenancy agreement with the landlord.

I was provided undisputed evidence that the landlord and a society which provides programs to those with acquired brain injury (the society) executed a written tenancy agreement for a tenancy set to commence November 1, 2010. The security deposit was paid by the society and rent has been paid to the landlord by the society at all times during the tenancy. The applicant signed a Code of Conduct agreement with the society and was provided occupancy of the rental unit.

The applicant and the society were served with a 1 Month Notice to End Tenancy for Cause (the Notice) by the landlord on November 26, 2012 with an effective date of December 31, 2012. The Notice names both the society and the applicant as tenants. The applicant filed to dispute the Notice on November 30, 2012 whereas the society has accepted the end of the tenancy. Also on November 30, 2012 the society issued a letter discharging the applicant from the society's program and instructs the applicant to vacate the rental unit by December 31, 2012. The society has paid the landlord rent for "use and occupancy only" for January 2013 and the applicant continues to occupy the rental unit pending outcome of this dispute.

The landlord was of the position the applicant is not their tenant; however, the landlord requested an Order of Possession for the unit.

The applicant's agent submitted that by including the applicant's name on the 1 Month Notice the applicant is deemed to be a tenant. Further, the applicant's agent submitted that the Act applies to this dispute because the rental unit and the society are not specifically excluded from the applicability of the Act by virtue of section 4 of the Act.

### Issue(s) to be Decided

Is the applicant a tenant under a tenancy agreement with the landlord and do I have jurisdiction to resolve this dispute under the Act?

### Analysis

Pursuant to section 2, the Act applies to tenancy agreements, rental units, and other residential property in the Province. Section 4 excludes certain living accommodation from the application of the Act. Before considering whether the living accommodation is excluded or not under section 4, I must first be satisfied that there is a tenancy agreement between the applicant and the respondent.

Under the Act, a landlord is a person authorized to permit occupation of a rental unit under a tenancy agreement. The Act defines a tenancy agreement to be an agreement, whether written, oral, express or implied, between a landlord and a tenant respecting possession of a rental unit. Among other things, the Act requires a landlord to prepare a written tenancy agreement and provide the tenant with possession of the rental unit, use of the common areas, and other services and facilities specified under the tenancy agreement. In exchange, the tenant is required to pay rent to the landlord and may be required to pay a security deposit at the beginning of the tenancy.

In this case, the landlord/respondent prepared a written tenancy agreement identifying the society as the tenant, albeit the name of the society is misspelled on the document, and the tenancy agreement was executed by an agent of the society. I was not provided evidence that would indicate the written tenancy agreement was otherwise amended in accordance with the requirements of the Act or terminated in some other manner before the issuance of the 1 Month Notice to End Tenancy that is the subject of this dispute. Therefore, I find the written tenancy agreement provided to me as evidence to be a valid tenancy agreement and is the best evidence as to the identity of the tenant.

Further, the rent was paid to the landlord/respondent by the society and the tenancy agreement indicates the society paid a security deposit.

In contrast, the applicant has not paid rent to the landlord/respondent, did not pay a security deposit, and was not a party to the written tenancy agreement.

I find that the landlord's inclusion of the applicant's name on the Notice to End Tenancy, and on warning letters, insufficient to conclude that a tenancy agreement formed between the applicant and the landlord in light of the other evidence indicating the society has a tenancy agreement with the landlord.

Based upon the foregoing, I conclude that the applicant and the respondent do not have a tenancy agreement and the Act does not apply to their relationship. Therefore, I decline to proceed with this Application.

Having refused to proceed with this Application I must also decline the landlord's request for an Order of Possession. Rather, the landlord remains at liberty to file its own Application for Dispute Resolution requesting an Order of Possession against the society if necessary.

#### Conclusion

The applicant and the respondent do not have a tenancy agreement and the Act does not apply to the parties named in this Application.

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 09, 2013.

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Residential Tenancy Branch

