



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC

### Introduction

This hearing dealt with an application for dispute resolution by the landlord/applicant ("applicant") under the Residential Tenancy Act (the "Act") seeking an order of possession for the rental unit due to alleged cause.

The applicant appeared; the tenant/respondent ("respondent") did not appear.

### *Preliminary Issues:*

An issue arose after a review of the evidence and during the hearing, which was whether the applicant in this proceeding has the authority to start and proceed with this application. For the following reasons I find that she did not.

The applicant presents herself as the landlord; however, she is actually a tenant in the same property. The applicant did not provide any documentation to demonstrate that she has the authority to act on behalf of the landlord/owner and to represent their interests.

Further the respondent is the daughter of the applicant, and the applicant presented that she needed to evict her daughter from her bedroom due to circumstances outlined in her evidence. The applicant further stated that she collected money from the respondent, but that this money was paid towards food and expenses, not rent.

### Analysis

The *Act* defines a landlord as follows:

**"landlord"**, in relation to a rental unit, includes any of the following:

- (a) 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;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

I accept the evidence before me that the applicant is a tenant of the owner/landlord ("landlord") and that she has raised her daughter in the rental home, not acted as a landlord.

From the evidence presented in the written evidence and at the hearing, I accept that no tenancy agreement ever existed or was contemplated between the "respondent" and the landlord. As a result the applicant's daughter is considered an "Occupant" as defined in the *Residential Tenancy Policy Guideline Manual*, section 13: Rights and Responsibilities of Co-Tenants:

### **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.

In addition, I find that the applicant cannot meet the definition of a landlord as defined by the *Act*. The applicant has not provided any evidence that she has the authority to act on behalf of the owner or as the agent and is excluded by subsection (c) of the definition of "landlord" in the *Act* as she occupies the rental unit. On this basis I find that the legislation has contemplated this type of circumstance and in the absence of clear evidence of a joint tenancy, the *Act* does not apply.

Therefore, I find this dispute as between a tenant and family does not fall within the jurisdiction of the *Act*.

Conclusion

The application is dismissed without leave to re-apply as the application lacks jurisdiction 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* and is being mailed to both the applicant and the respondent.

Dated: February 05, 2013

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Residential Tenancy Branch

