



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Applicant to cancel a 1 Month Notice for Cause, issued on February 5, 2013.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Preliminary issue

The first issue that I must decide is whether the Act has jurisdiction over this matter in order to proceed with the application.

The respondent stated that she has a fixed term tenancy agreement with the owner of the rental unit and that she has exclusive possession of the unit. The respondent stated she rents rooms in to help pay the rent.

The respondent stated that the applicant does not have any obligation to the owner to pay rent as he is not a co-tenant on the tenancy agreement and has no legal rights under the Act.

The advocate does not dispute the respondent's position.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find 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 respondent under a tenancy agreement or this Act in relation to the rental unit;*
- (d) a former landlord, when the context requires this;*

In this case, the respondent is a tenant who has a fixed term tenancy agreement with the owner of the rental unit, and that agreement gives her exclusive possession. Therefore, I find the respondent is not a landlord as defined by the Act. Rather, I find the respondent is a tenant who occupies the rental unit.

Section 13 of the Residential Tenancy Policy Guidelines states:

*Where a tenant allows a person who is not a tenant to move into the premises and share 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 this case, the respondent allowed another person under an agreement to move into the rental unit to help pay rent. A new tenancy agreement with the owner of the rental unit to have the applicant added as a co-tenant was never entered into. Therefore, I find the applicant is not a tenant as defined under the guideline. Rather, I find the applicant is an occupant and has no legal rights under the *Residential Tenancy Act*.

As this is a dispute between a tenant and an occupant and not a dispute between a landlord and tenant, I find that there is no jurisdiction for the applicant to proceed with their application and I dismiss the application without leave to reapply.

### Conclusion

The applicant's application is dismissed for lack of jurisdiction.

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: March 07, 2013

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Residential Tenancy Branch

