



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPR, MNR, O

### Introduction

This hearing was scheduled to deal with a landlord's Application for an Order of Possession and Monetary Order for unpaid rent. 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 Issue – Jurisdiction

The respondent's legal counsel was of the position that the Act and my authority to resolve disputes does apply in this case. The applicant was of the position the parties have a tenancy agreement and the Act does apply.

It was undisputed that the respondent gave the applicant and his wife, the respondent's daughter, \$30,000.00 when the subject residential property was purchased. The respondent has been residing in the basement suite and the applicant and his wife living in the main living unit. Both parties referred to a written agreement signed by the parties on December 28, 2007 (herein referred to as the agreement) in making their submissions. Below, I have reproduced excerpts of that agreement:

[Respondent] is contributing \$30,000 to [applicant] as an investment in the property.

[Respondent] will pay \$200 per month to [applicant] as "rent" for as long as she lives with [applicant] at the property.

In the event that [respondent] wishes to end this agreement, she will provide 2 months written notice to [applicant]. In turn, [applicant] will pay out the sum of \$30,000 to [respondent] within that two month period. In the event that [applicant] wish to end this agreement, they will provide 6 months written notice to [respondent] and will pay out the sum of \$30,000 within that 6 month period.

As an investor of \$30,000 in the property, [respondent] is entitled to one seventh of the sale price upon the sale of the house.

It was undisputed that the respondent is not listed as a registered owner of the property and does not have an interest in the property that is registered at the land title office.

Below, I have summarized the parties' respective positions with respect to my jurisdiction and applicability of the Act.

The respondent's legal counsel submitted that the respondent contributed \$30,000.00 to purchase the property as a joint venture and has an equity investment in the property. The term "rent" in the agreement refers to her contribution for utilities but does not denote a tenancy relationship between the parties. The agreement remains in effect and the agreement serves to govern the investment in the property but the agreement does not establish a tenancy relationship between the parties.

The applicant submitted that the "rent" denotes the monthly amount the respondent must pay to live in the house and is not just for utilities. The agreement between the parties is that of a month-to-month tenancy agreement since it does not have a specific expiry date. Further, the repairs, maintenance, mortgage payments, and utilities have been paid for by the applicant and the respondent's lack of contribution to these expenditures is inconsistent with an ownership interest. The applicant confirmed that the last paragraph of the agreement, where the respondent is entitled to one-seventh of an interest in the property if it sold before the agreement is otherwise ended, was intended to protect the respondent's investment. The applicant confirmed that the one-seventh share of the sale price would apply whether the value of the property increased or decreased.

#### Preliminary Issue – Analysis and Findings

The Act, and my authority to resolve disputes, applies and is limited to tenancy agreements between a landlord and a tenant with respect to use and occupancy of a rental unit and residential property.

Residential Tenancy Policy Guideline 27: *Jurisdiction* provides policy statements with respect to applicability of the Act in certain situations or circumstances. Under Part B: *Statutory Jurisdiction*, Section 5: *Transfer of an Ownership Interest* of the policy guideline, it states, in part:

...a tenancy agreement is a transfer of an interest in land and buildings, or a license. The interest that is transferred, under section 1 of the Acts, is the right to possession of the residential premises. If the tenant takes an interest in the land and buildings which is higher than the right to possession, such as part ownership of the premises, then a tenancy agreement may not have been entered into. In such a case the RTB may again decline jurisdiction because the Acts would not apply.

[my emphasis added]

In the agreement entered into by the parties in December 2007, the parties contemplated how the agreement, and the respondent's occupancy could be ended, and both provisions require a payment of \$30,000.00 to the respondent. I find that in order to end the agreement being conditional upon payment of \$30,000.00 to the respondent inconsistent with the provisions for ending a tenancy under the Act. I further find these provisions for ending the agreement suggest a relationship between the parties that is something other or something more than that of a landlord and tenant with a tenancy agreement.

The agreement entered into between the parties also conveys an equity interest in the property to the respondent should the property be sold before the agreement were to be ended. Thus, it would appear to me that the respondent has an interest in the property that is greater than the right to possession of the rental unit.

In light of the above, I find I am unsatisfied that the parties have a landlord and tenant relationship to which the Act applies and I decline to accept jurisdiction to resolve this dispute.

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 10, 2014

---

Residential Tenancy Branch

