



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

The landlord attended the telephone conference call hearing; the tenant did not attend.

The landlord submitted a registered mail receipt with the tracking number to substantiate that he served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on July 23, 2014.

Based upon the submissions of the landlord, I find the tenant was served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Residential Tenancy Act and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Does the Residential Tenancy Act apply to this dispute and do I have jurisdiction to decide this dispute?

If so, is the applicant entitled to monetary compensation and for recovery of the filing fee paid for this application?

### Background and Evidence

The landlord submitted that he rented a home to a tenant, NB, who moved into the home on or about December 1, 2013; sometime thereafter and without the knowledge of the landlord, NB rented out portions of the rental home to other tenants, one being the named respondent here.

The landlord submitted further that he never had a tenancy agreement with this tenant, has never received rent from this tenant, and did not collect a security deposit from this tenant.

The landlord submitted further that this tenant has now vacated the rental unit and did extensive damage prior to departing.

### 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;

In the case before me, I find the evidence shows that the landlord has not permitted this tenant occupation of the rental unit and that the tenant moved into the residential property without the landlord's knowledge or consent. I therefore find that no tenancy agreement ever existed or was contemplated between the landlord/applicant and tenant/respondent. As a result I find the tenant/respondent 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.

On this basis, I find this dispute as between the parties listed here as landlord and tenant does not fall within the jurisdiction of the Act.

### **Conclusion**

Due to the above, I decline to accept jurisdiction of the applicant's application as I have found that this dispute between the parties is not as between landlord and tenant.

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: September 23, 2014

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Residential Tenancy Branch

