



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDC, OLC, OPT

### Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Applicant applied for a monetary Order for money owed or compensation for damage or loss; for an Order of Possession for the rental unit; and for an Order requiring the Respondent to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement. During the hearing the Applicant withdrew the application for an Order of Possession, as he has found alternate accommodations.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Neither party submitted documentary evidence for these proceedings.

### Issue(s) to be Decided

Are these living arrangements governed by a tenancy agreement and/or the *Act* and, if so, is there a need to issue an Order requiring the Respondent to comply with the *Act* or to grant the Applicant compensation for damage or loss as a result of a breach of the *Act*?

### Background and Evidence

The Applicant stated that he moved into the cottage that is the subject of this dispute on August 21, 2014 and the Respondent stated that he moved in on July 31, 2014. The parties agree that the police directed the Applicant to vacate the cottage on, or about, September 24, 2014. The parties agree that the police asked the Applicant to vacate the cottage at the request of the Respondent.

The Respondent argued that this cottage is not governed by a tenancy agreement and/or the *Act*, in part, because the Respondent shares the kitchen and bathroom of the cottage with the Applicant.

The Respondent stated that this cottage is on a farm and that there are four kitchens on the farm, one of which is in the cottage. She stated that anyone in her family, any clients using the farm, and any staff are entitled to use the kitchen and/or bathroom in the cottage until 6:00 p.m., after which the Applicant has sole use of the cottage.

The Applicant agreed that staff and clients are entitled to use the kitchen and bathroom in the cottage until 6:00 p.m. He stated that the Respondent and her family have never used the kitchen or bathroom in the cottage since he has lived there, as they have their own facilities in the main residence.

The Respondent stated that they do not own the farm or the cottage and that she is currently renting the property, with the intent to purchase it. She stated that was not acting on behalf of her landlord when she agreed to permit the Applicant to occupy the cottage.

The Respondent argued that this cottage is not governed by a tenancy agreement and/or the *Act*, in part, because they have no written tenancy agreement. The Applicant agrees that there is no written tenancy agreement.

The Respondent argued that this cottage is not governed by a tenancy agreement and/or the *Act*, in part, because they have an accommodation/work agreement, which entitles the Tenant to live in the cottage in exchange for employment. The Applicant agrees that he is entitled to live in the cottage in exchange for employment.

### Analysis

Section 4(c) of the *Act* stipulates that the *Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. On the basis of the testimony of the Respondent, I find that the Respondent is not the owner of the cottage. As the Respondent is not the owner of the cottage, I could not conclude that the *Act* does not apply on the basis of section 4(c), even if I concluded that the parties shared kitchen and/or bathroom facilities.

The *Act* defines a "tenancy agreement" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. As a tenancy agreement does not need to be in writing to have force and effect, I cannot conclude that there is no tenancy simply because there is no written agreement.

The *Act* defines "rent" as money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities. I find that the definition of rent includes labour when there is an agreement that the person will be compensated for his/her labour by being permitted to occupy a rental unit. As there was an agreement that the Applicant could occupy the cottage in exchange for

labour, I cannot conclude that there is no tenancy simply because money was not exchanging hands.

The *Act* defines a landlord as 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;

As there is no evidence to show that the Respondent is the owner of the rental unit, the owner's agent, or another person who is acting on behalf of the owner, I find that the Respondent is not a landlord as defined by section 1(a) of the *Act*.

As there is no evidence to show that the Respondent is an heir, assign, personal representative or successor in title to a person referred to in section 1(a) of the *Act*, I find that the Respondent is not a landlord as defined by section 1(b) of the *Act*.

As the evidence shows that the Respondent is a tenant who is occupying the residential property, I find that she is not a landlord as defined by section 1(c) of the *Act*.

As there is no evidence to show that the Respondent is a former landlord of this residential property, I find that the Respondent is not a landlord as defined by section 1(d) of the *Act*.

As the Respondent is not the landlord of the cottage; the Applicant is occupying the cottage with the consent of the Respondent; and there is no evidence that he has entered into a tenancy agreement with the landlord of the cottage, I find that the Applicant is an occupant rather than a tenant. As the Applicant is an occupant of the cottage, I find that he has no rights or obligations under the tenancy agreement.

I find that the legislation has contemplated this type of circumstance and in the absence of evidence of a joint tenancy or a co-tenancy, the *Act* does not apply. Therefore, I find that neither the Applicant nor the Respondent is governed by this *Act*.

Conclusion

As I do not have jurisdiction over the relationship between the Applicant and the Respondent, the Application for Dispute Resolution is dismissed without leave to reapply.

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: November 12, 2014

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Residential Tenancy Branch

