



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, FF

### Introduction

This hearing dealt with an application from the landlord under the *Residential Tenancy Act* (the *Act*). The applicant/landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- authorization to recover his filing fee for this application from the Respondent pursuant to section 72.

### Preliminary Issue: Service of Documents

The applicant/landlord provided sworn testimony with respect to the service of the 10 day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice). Proof of service was not provided with the documentary evidence of the landlord. The applicant/landlord testified that he was present when the 10 Day Notice was handed to the respondent. He testified that this service took place on or about July 1, 2014 and that two witnesses were present.

The applicant/landlord also provided sworn testimony with respect to the service of the Notice of Dispute Resolution hearing and the Dispute Resolution package. The applicant/landlord, after providing service dates that could not have been accurate given the date of the package, testified that his agents provided this Notice and package on September 16, 2014. The applicant/landlord testified that he could not be certain with respect to the service date, mainly because he had not been present for this service nor could he refer to any document in his own possession that confirmed this date. There were no materials provided to serve as proof of service of the Dispute Resolution Notice and package.

The initial burden to meet is whether the Residential Tenancy Branch has jurisdiction to hear this matter. That issue will be addressed before any determinations are made with respect to service of documents.

### Issues to be Decided

Does a tenancy agreement exist between the two parties or does this matter otherwise fall under the *Residential Tenancy Act*?

If so, is the applicant/landlord entitled to an Order of Possession?

Is the applicant entitled to recover the filing fee for this application from the Respondent?

### Background and Evidence

The landlord's application to end tenancy for cause relies on significant interference with or unreasonable disturbance of another occupant as well as significant risk to the landlord's property, referring to electrical alterations made by the respondent in the barn.

With respect to the tenancy, the landlord indicated that the respondent had been subject to a tenancy agreement on the property until the spring of 2012. He advised that the respondent had become ill and the landlord had allowed him to remain on the property for approximately one year after the end of the tenancy. The landlord testified that, since spring 2012, the respondent did not pay rent, provide a security deposit nor did the parties enter into a written tenancy agreement. During 2014, the respondent had moved to the barn, without the permission of the landlord.

The landlord provided documentary evidence by way of a letter entitled "Legal Notice" indicating that, due to safety reasons, the respondent must vacate the barn. The landlord indicated, in his written evidence and in his oral testimony, that the place where the respondent chose to inhabit, the barn, was not a proper residence. He noted that there was no sanitation system; and there was no occupancy permit. As well, he testified that the respondent had made changes to the electrical system in that barn.

The landlord also provided documentary evidence from a lease tenant at the property indicating that the respondent had broken into her home; removed property from outside her home; that his dogs had attacked her dogs; and that he had made attempts to intimidate people. This witness was not available for testimony at the hearing but provided a signed statement that stated the respondent was "neither an agent for the owners or is he a tenant".

The landlord stated in his documentary materials and in his oral sworn testimony that the respondent's residence in the barn was not authorized. He stated, in his letter to the respondent that the respondent was "neither a tenant (as no rental or tenancy

agreement has ever existed or currently consists between yourself and the owners) nor any longer an employee of the farm by which you were permitted to have access the property”.

The landlord further indicated that the respondent had threatened himself and his partner with destruction of the property. The landlord testified that the barn in question had burnt to the ground November 3, 2014, the day before this hearing.

### Analysis

Even if service of these documents is proven to a balance of probabilities in this case, any application under the Residential Tenancy *Act* must meet the provisions of the *Act*. The landlord must first establish, on a balance of probabilities, that the respondent is in fact a tenant.

Section 2(1) of the *Act* defines who the *Act* applies to;

Despite any other enactment but subject to section 4 (*what this Act does not apply to*), this *Act* applies to tenancy agreements, rental units and other residential property.

The definition section of the *Act* defines further the parameters of application of the *Act*;

A “tenancy agreement” means 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 license to occupy a rental unit.

A “rental unit” means living accommodations rented or intended to be rented by a tenant.

I find that the respondent in this case is not a tenant for the purposes of this application. There was no formal agreement and no informal consensus between this landlord and the respondent. There was no rent or security deposit exchanged. The barn was not a rental unit as it was not habitable nor was the intention of the parties to rent this unit to the respondent. Finally, it should be noted that, prior to the hearing of this matter, the barn, the structure that the landlord sought to remove the respondent from, was no longer in existence.

In order for the applicant/landlord to succeed in this application, the applicant must show that the Residential Tenancy *Act* applies. Residential Tenancy Guideline 27 states

that the Residential Tenancy Branch arbitrator only has the jurisdiction conferred on them over landlords and tenants. I decline jurisdiction over this matter as I find the applicant/landlord has not demonstrated that this application falls within the jurisdiction of the *Residential Tenancies Act*.

### Conclusion

I find the respondent is not a tenant and that the Residential Tenancy *Act* does not apply in this matter. I decline to hear this matter as I have no jurisdiction to consider this application.

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 06, 2014

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Residential Tenancy Branch

