



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNR, FF, O

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Applicants for the following reasons: to cancel a notice to end tenancy for cause; for a Monetary Order for unpaid rent or utilities; to recovery the filing fee from the Respondent; and, for “Other” reasons, being a determination on the jurisdiction of the *Residential Tenancy Act* (the “Act”) in this matter.

One of the Applicants and her legal counsel appeared for the hearing and both provided affirmed testimony as well as written evidence prior to the hearing. There was no appearance for the Respondent during the 20 minute duration of the hearing or any submission of written evidence prior to the hearing. Therefore, I turned my mind to the service of the documents by the Applicants for this hearing.

The Applicant explained that she had served the Respondent with the Notice of Hearing documents and a copy of the Application by registered mail on March 9, 2015. The Applicant provided the Canada Post tracking number into oral testimony which was noted in the file. The Canada Post website indicates that the Respondent had received and signed for the documents on March 11, 2015. Based on this undisputed evidence, I determined that the Respondent had been notified of this hearing and I continued the hearing in the absence of the Respondent.

The material provided in the file by the Applicants prior to this hearing indicated that there was an issue of jurisdiction in this matter. Legal counsel confirmed that they were also seeking determination of jurisdiction of the Act before they could proceed with their Application.

### Issue to be Decided

Does the Act have jurisdiction in this case?

Legal counsel explained that this case involves a family relationship between the Respondent's and Applicants' mother. The Respondent lived with the mother who was the owner of the house and they both shared kitchen and bathroom facilities at the same address. The Respondent provided care to his mother until August 2011 after which he continued to reside with his mother in the same home.

Legal counsel explained that the parties' mother passed away on August, 2013 and he was instructed by the mother's other children (the Applicants) to deal with the probate issues for the property. Legal counsel confirmed that the mother's house and her estate has transferred to the Applicants as executors of their mother's estate.

Legal counsel confirmed that the Respondent continues to reside in the home with his children and that the dispute involving the Applicants and the Respondent regarding the selling of the home is still ongoing.

Legal counsel confirmed that at no time was the Respondent required to pay rent when he resided with his mother and currently, the Respondent does not pay rent either. No residential tenancy agreement was signed between any of the parties and there was no request or exchange of a security deposit.

### Analysis & Conclusion

Policy Guideline 9 to the Act on Tenancy Agreements and Licences to Occupy explains when a tenancy under the Act has been entered into. It also lists a number of conditions an Arbitrator **may** consider surrounding the occupation of the premises and what the parties intended in the circumstances. The guideline states that **some** of the factors that **may** weigh **against** finding that a tenancy exists between the parties are as follows:

- Payment of a security deposit is not required.
- The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.
- The occupier pays property taxes and utilities but not a fixed amount for rent.
- The owner, or other person allowing occupancy, retains the right to enter the site without notice.
- The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.
- The parties have agreed that the occupier may be evicted without a reason, or may vacate without notice.

Based on the details provided for this hearing I find that a tenancy under the jurisdiction of the Act has never been established in this matter. This is based on the fact that: at no time has the Respondent paid rent in exchange for having occupancy of the home both before or after his mother passed away; payment of a security deposit was not required or made; and, the parties had a family relationship and occupancy was given out of generosity rather than business considerations.

Furthermore, Section (4) (c) of the Act stipulates that the Act does not apply to living accommodation where the Respondent shares bathroom and kitchen facilities with the owner of that accommodation. As the Respondent did share kitchen and bathroom facilities with his mother who owned the property, this further supports the above finding that the Act does not apply to this situation.

Based on the foregoing, I must decline jurisdiction in this matter. The Applicants are at liberty to seek alternative legal remedies to address their dispute.

#### Conclusion

For the reasons set out above, I decline jurisdiction in this matter.

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: April 17, 2015

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Residential Tenancy Branch

