



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

CNC, DRI, OLC, RR, OPC, O, and FF

### Introduction

This hearing was convened in response to cross applications.

On July 21, 2015 the Applicant filed an Application for Dispute Resolution, in she applied:

- for an Order requiring the Landlord to comply with the *Residential Tenancy Act* (Act) or the tenancy agreement;
- to dispute a rent increase;
- for authority to access the rental unit; and
- for “other”.

On August 10, 2015 the Applicant amended her Application for Dispute Resolution by:

- adding an application to set aside a One Month Notice to End Tenancy
- adding an application for authorization to reduce the rent for repairs for repairs, services, and facilities agreed upon but not provided; and
- removing the application for authority to access the rental unit.

The Applicant stated that on August 12, 2015 the amended Application for Dispute Resolution and the 34 pages of evidence that was submitted to the Residential Tenancy Branch on September 15, 2015 were served to the Respondent, via registered mail. The Respondent acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On September 03, 2015 the Respondent filed an Application for Dispute Resolution, in which she applied for an Order of Possession for Cause and to recover the fee for filing an Application for Dispute Resolution.

The Respondent stated that on September 04, 2015 her Application for Dispute Resolution, the Notice of Hearing, and the 117 pages of evidence that was submitted to the Residential Tenancy Branch on September 03, 2015 were served to the Applicant, via registered mail. The Applicant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On September 18, 2015 the Applicant submitted an additional 25 pages of evidence to the Residential Tenancy Branch. The Applicant stated that these documents were served to the Respondent by registered mail on September 18, 2015. The Respondent acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

### Preliminary Matter

The parties were advised that the hearing would proceed and if I subsequently determined that I did not have jurisdiction in this matter I would not consider any of the merits of the Application for Dispute Resolution that has been filed by either party.

### Issue(s) to be Decided

Do I have jurisdiction in this matter?

If I do have jurisdiction in the matter, is the Respondent entitled to an Order of Possession or should the Notice to End Tenancy be set aside?

If I do have jurisdiction in the matter, has there been a rent increase that does not comply with the legislation?

If I do have jurisdiction in the matter, is the Applicant entitled to a rent reduction?

### Background and Evidence

The Applicant and the Respondent agree that:

- the Applicant moved into the rental unit on July 10, 2013;
- when the Applicant first moved into the rental unit she was occupying a bedroom in the unit under a tenancy agreement she had signed with a third party;
- the third party the Applicant had the tenancy agreement with ended her tenancy with the owner of the rental unit;
- the Respondent entered into a tenancy agreement with the owner of the rental unit;
- the Respondent lives in the rental unit;
- on August 31, 2013 the Applicant agreed to pay rent of \$425.00 to the Respondent for the right to continue to occupy a bedroom in the rental unit, effective September 01, 2013; and
- the Applicant and the Tenant never entered into a written agreement regarding this ``tenancy``.

The Respondent describes herself as the ``principle tenant``. She stated that:

- she rents the entire rental unit from the owner;
- she rents out rooms in the rental unit to supplement the rent she has to pay to the owner;
- she has to pay the full amount of rent to the owner, regardless of how many people are occupying the rental unit;

- she has to pay the full amount of rent to the owner, even if the people living in the rental unit do not pay rent to her; and
- the Applicant and other people living in the unit are living as ``roommates``.

The Applicant is not certain of the relationship between the Respondent and the owner of the rental unit, although she thinks the owner is the Respondent's landlord.

The Legal Advocate submits that the Respondent has sublet a portion of the rental unit to the Applicant.

### Analysis

The *Residential Tenancy Act (Act)* defines a landlord as:

- (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 Applicant 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 Applicant is not a landlord as defined by section 1(a) of the *Act*.

As there is no evidence to show that the Applicant 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 Applicant is not a landlord as defined by section 1(b) of the *Act*.

As the evidence shows that the Applicant is a tenant who is occupying the rental unit, I find that he is not a landlord as defined by section 1(c) of the *Act*.

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

Residential Tenancy Policy Guideline 13 stipulates that when 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. I concur with this guideline. In the absence of evidence to establish that the Applicant entered into a tenancy agreement with the Respondent's landlord, I find that the Applicant is merely an occupant of the rental unit, and not a tenant.

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

### Conclusion

As the *Act* does not apply to these parties, I find that I do not have jurisdiction in this matter and I dismiss the Application for Dispute Resolution filed by the Applicant and the Application for Dispute Resolution filed by the Respondent.

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 30, 2015

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Residential Tenancy Branch

