



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR

### Introduction

This hearing dealt with the landlord's application pursuant to section 55 of the *Residential Tenancy Act* (the "*Act*") for an order of possession for unpaid rent.

The respondent and applicant attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The respondent confirmed receipt of the applicant's application ("Application") for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the respondent was duly served with the application.

### Preliminary Issue - Jurisdiction

The applicant testified that there was no tenancy between the parties. She filed the application against her estranged husband who has unlawfully taken residence in a workshop on her son's property. Her estranged husband, (the "respondent") has not paid rent and refuses to vacate the premises.

The respondent testified that the parties are in the process of divorcing and he has taken residence on a shared property. He testified that there was no agreement to pay rent and contended that this was not a tenancy arrangement.

Section 2 of the *Act* establishes jurisdiction. Specifically it sets out that the *Act* applies to tenancy agreements, rental units and other residential property. A tenancy agreement is an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit. Tenancy is defined under the *Act* as a tenant's right to possession of a rental unit under a tenancy agreement.

For a tenancy agreement to exist there must be an intention of the parties to form the relationship of landlord and tenant. Based on the parties' acknowledgement that this was the occupation of property after a marital breakdown and not that of a tenancy

arrangement, I find that this is not a matter within the jurisdiction of the Residential Tenancy Branch.

Conclusion

I decline jurisdiction over 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: June 17, 2016

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Residential Tenancy Branch