



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

The hearing was conducted via conference call. The named tenant attended and participated in the hearing. The landlord's counsel appeared for the landlord as his agent.

Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence provided by the other party.

As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence with no issues, I accept that both parties have been properly served as per sections 88 and 89 of the Act.

### Preliminary Issue

The respondent's counsel raised a jurisdiction issue as a preliminary matter. The respondent has taken the position that both parties are not tenants and landlords as defined by the *Residential Tenancy Act* and it is the respondent's view that the Residential Tenancy Branch has no jurisdiction over this dispute. The landlord based its position upon the following facts.

The owner is not a landlord and that tenant is just a guest. There is no "lease" or tenancy agreement between the two parties. The applicant has not given any value to the owner in exchange for occupying the premises. In response, the applicant stated

that the respondent offered the respondents house for a 2 year period beginning August 2015 to end in July 2017 in the form of 4 options in an email which states:

1. *give you some time to decide about the best approach by giving you 6 months rent. I would do this now.*
2. *Move in to the house and see how things go. I prefer no lease.*
3. *Rent for 1000 per month. We could have a lease.*
4. *Some combination of 3 and 4 like no rent first year and 1500 second year.*

The applicant responded,

*Again. Thanks for sending the options. The best option for me and my kids is renting from you with a lease. I'm leaning toward giving my notice Aug. 31 and moving into your house after M. leaves, and hopefully being completed out of my current house by Sept. 30...*

According to the applicant, the respondent agreed to a 2 year lease and that he refused to accept any money from the applicant. There is no signed tenancy agreement and the applicant has not paid any rent. Both parties agreed that the respondent made an offer as shown by the email and that no actual acceptance was made for any of the options. Both parties agreed that the applicant moved in.

The *Residential Tenancy Act* defines "tenancy agreement" as follows:

**"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;

Section 2 of the Act, entitled: "What this Act applies to" provides that:

- 2 (1) Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, rental unit and other residential property.
- (2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

The Residential Tenancy Act also provides by section 91 that: “Except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia”.

At common law a license to occupy land amounts to a permission to occupy land without which the person’s occupancy would be unlawful. It is distinguished from a tenancy on the basis that a tenancy creates an interest in the land by way of a grant of exclusive possession, whereas a license does not create an interest in land.

The Residential Tenancy Act has specifically included a license to occupy within the definition of tenancy agreement. Section 2 makes it plain that the Act applies to tenancy agreements, rental unit and other residential property.

I find that the applicant’s occupation of the property as a guest as claimed by the respondent was permission to occupy residential property given by the landlord and that it is a license to occupy that falls within the definition of a tenancy agreement in the Act. I have therefore determined that the *Residential Tenancy Act* applies to the relationship between the parties and the applicant’s occupancy of the residential property and therefore that I have jurisdiction to hear and determine this dispute. Both parties were informed during the hearing and I heard their evidence and submissions.

#### Issue(s) to be Decided

Is the tenant entitled to an order for the landlord to comply with the Act, regulation or tenancy agreement?

#### Background, Evidence and Analysis

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant’s claim and my findings are set out below.

Pursuant to section 63 of the Act, an arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

During this hearing, the parties reached an agreement to settle their dispute under the following final and binding terms:

1. The tenant agreed to withdraw her application.
2. Both parties agreed to mutually end the tenancy on October 1, 2016 at or before 1 pm, by which time the tenant agreed to have vacated the rental unit.

The parties agreed that these particulars comprise the full and final settlement of all aspects of their dispute for both parties.

### Conclusion

The tenants' application is withdrawn.

The attached order of possession is to be used by the landlord if the tenant does not vacate the rental premises in accordance with their agreement. The landlord is provided with this order in the above terms and the landlord should serve the tenant with this order so that it may be enforced in the event that the tenant does not vacate the premises by the time and date set out in their agreement. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

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: July 27, 2016

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Residential Tenancy Branch