



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LAT LRE OLC

### 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; authorization to change the locks to the rental unit pursuant to section 70; and/or an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

### Preliminary Issue to be Decided: Jurisdiction

Does this living arrangement fall within the scope of the *Residential Tenancy Act*?

### Background and Evidence

The respondent testified that the applicant is her brother's son (nephew). She testified that her brother has been living in the residential premises (a portion of the respondent's home) since 2005. The respondent testified that the nephew has resided in the home since 2015. The respondent argued that this living arrangement has never been intended as a tenancy.

The respondent provided undisputed testimony that there is no written tenancy agreement, no terms of tenancy in oral agreement between the parties, no security deposit and no set rental amount for this living arrangement. The respondent explained that the living arrangement with her brother came about when she (purchased the home and) chose to conduct renovations on the home. Her brother moved in and his occasional payments to the respondent supplemented the cost of her renovations. She testified that the arrangement worked very well for many years and, when her renovations were complete, her brother made occasional payments to her that assisted in paying the strata fees for the residential property.

The applicant testified that he felt this was a tenancy as his aunt treated him and his father like she was their landlord. He testified that each month, he and his father gave money to the respondent and that she would request the money if it was not provided in time.

The applicant submitted an affidavit in his father's name that indicated it was prepared for the "Court of Justice of British *Culombia* [sic]" and dated July 9, 2116. It stated that his son/the applicant has paid directly rent to his sister without his knowledge. The respondent's counsel argued that this affidavit was not a proper legal document. The applicant's father testified as a witness. On cross examination by the respondent/counsel, the respondent's brother indicated that he had not had the affidavit sworn. On further cross examination, the respondent's brother stated that his sister had taken him in but that he believed his son was considered a tenant.

The respondent submitted email correspondence with her brother. The materials, dated March and April 2016 include communication between the brother and sister and a March email from the applicant to the respondent stating,

*Hi Auntie... I'm filling out an application for [housing]... they require a "Notice to End Tenancy"...*

Email correspondence between the respondent sister and her brother over the course of April 2016 show the respondent expressing concern about providing a Notice to End Tenancy to the applicant when he is not her tenant. The brother does not dispute the statement that the applicant is not a tenant but merely indicates that he is very eager to find a way to move his son out,

*...he has been here as my guest and not paying me rent. No money transaction. But I find his stay here, way too long and have asked him to leave. [housing] would see this as a crisis and do something....*

### Analysis

The definition section of the *Residential Tenancy Act* describes a tenancy as "a means a tenant's right to possession of a rental unit under a tenancy agreement". All parties agreed that there is no formal written agreement the respondent and her brother or her brother's son. I find that there was no creation of a "tenancy" as defined by the *Residential Tenancy Act* between the nephew/applicant and respondent.

To clarify, the *Act* describes a tenancy agreement as “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 licence to occupy a rental unit”. The requirements for a tenancy agreement under the Residential Tenancy Regulations include a written agreement with standard terms including the provision of rent and any deposits (security and/or pet damage deposits) signed and dated by both parties to the agreement, and written in a manner so as to be easily understood. Tenancy agreements are to be clear in their terms and it is intended that the entering of a tenancy agreement is understood and agreed upon by both parties. This is not the case with respect to the respondent and applicant(s) in this matter.

Despite the provisions of the Residential Tenancy Regulation, there are certain circumstances in which an oral agreement may be binding and enforceable under the *Residential Tenancy Act*. However, I accept the evidence of the respondent that there was no written *or oral* agreement made with respect to her nephew’s stay in her home.

Simply, the *Residential Tenancy Act* applies tenants and landlords. Given the conflicting testimony, some of this decision hinges on a determination of credibility. In addition to the manner and tone (demeanour) of the testimonial evidence, I have considered whether the testimony at this hearing is consistent with the other events that took place during this tenancy and with the documentary evidence available to me.

The demeanor of the respondent convinced me of her credibility. I find that the respondent answered all enquiries in a calm and candid manner, and never wavered in her version of events, regardless of the difficult nature of this family dispute.

The applicant’s testimony did not convince me of his version of events. The applicant’s testimony was volatile and inconsistent. Furthermore, I found the documentary evidence that the applicant relied on to lack credibility. The undisputed email correspondence and other documentation submitted by the landlord refuted most claims raised by the applicant. The applicant’s father’s testimony was equally incredible in that it directly conflicted with the email correspondence between the applicant’s father and his sister, the respondent.

Given my credibility findings with respect to the parties and my determination that the applicant is not a tenant and therefore does not have a right to possession of a rental unit under a tenancy agreement, I dismiss the tenant’s application in its entirety.

Based on the evidence provided by both parties for this dispute resolution hearing, I note that the applicant’s father may have some rights as an occupant of the residence however he is not a named party/applicant for this dispute.

I find that the arrangement described by the parties at this hearing does not constitute a tenancy enforceable under the *Residential Tenancy Act*. I therefore have no jurisdiction to render a decision in this matter.

Conclusion

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: August 24, 2016

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Residential Tenancy Branch

