



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MND, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Applicant for an order of possession, for a monetary order for unpaid rent, for damages to the rental unit and for money owed.

The Applicant attended the hearing. As the Respondent did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The Applicant testified the Application for Dispute Resolution and Notice of Hearing were served in person on August 5, 2016

I find that the Respondent has been duly served in accordance with the Act.

### Preliminary issue

The first issue that I must decide is whether the Act has jurisdiction over this matter in order to proceed with the application.

The Applicant stated that they have a tenancy agreement with the owner of the rental unit, whom is there mother. The Applicant stated that they rented a bedroom to the Respondent AV to help pay the rent.

JD testified that they have power of attorney for their mother, who is the owner of the property. JD stated that AV is was not added to the tenancy agreement as a tenant.

## Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

**“Landlord”**, in relation to a rental unit, includes any of the following:

- (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 respondent under a tenancy agreement or this Act in relation to the rental unit;*
- (d) a former landlord, when the context requires this;*

In this case, the Applicant is a tenant who has tenancy agreement with the owner of the rental premise, their mother. That agreement gives them exclusive possession of the rental unit. Therefore, I find the Applicant is not a landlord as defined by the Act. Rather, I find the Applicant is a tenant who occupies the rental premises.

Section 13 of the Residential Tenancy Policy Guidelines states:

*Where a tenant allows a person who is not a tenant to move into the premises and share 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.*

In this case, the Applicant allowed another person under an agreement to move into the rental premises to help pay rent. A new tenancy agreement with the owner of the rental premises to have the Respondent added as co-tenant was never entered into. Therefore, I find the Respondent is not a tenant. **I find the Respondent AV is an occupant and has no legal rights or obligations under the *Residential Tenancy Act*.**

As this is a dispute between a tenant and an occupant and not a dispute between a landlord and tenant, I find that there is no jurisdiction for the Applicant to proceed with their application and I dismiss the application without leave to reapply.

At the conclusion of the hearing the Applicant requested that the decision be faxed to their MLA's office. The Applicant indicated that they have permission for documents to be sent there. The fax number is indicated on the front of the decision

### Conclusion

The applicants' application is dismissed for lack of jurisdiction.

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 23, 2016

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Residential Tenancy Branch