



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, AAT, DRI, LRE, OLC, OPT, RPP, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Applicant for the following reasons:

- to obtain an Order of Possession of the rental unit;
- for the Respondent to return the Applicant’s personal property;
- for the Respondent to comply with the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement;
- to suspend or set conditions on the Respondent’s right to enter the rental unit;
- to dispute an additional rent increase; and,
- to recover the filing fee from the Respondent.

The Applicant then amended the Application on the same day it was filed by adding in a request for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.

The female Respondent and the Applicant appeared for the hearing and provided affirmed testimony. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were provided the opportunity to present their evidence and make submissions to me.

The Respondent confirmed receipt of the Application and the Notice of Hearing documents. However, both parties denied receipt of each other’s documentary and photographic evidence provided prior to this hearing. As a result, I offered both parties an opportunity to adjourn the hearing in order to allow for the exchange of evidence to take place. However, the Respondent indicated that there was an issue of jurisdiction in this matter and as a result both parties agreed to continue with the hearing allowing me to consider the documentary and photographic evidence in relation to the issue of jurisdiction only. I also allowed the evidence to be used because the Respondent stated

that the text message correspondence the Applicant wanted to rely to prove jurisdiction, took place between the parties and that she would have been aware of its existence.

### Preliminary Jurisdictional Issue

The Respondent stated that the hearing should not hear the Tenant's Application because this was not a matter for the Residential Tenancy Branch. Therefore, I first turned my mind to the issue of whether I have the authority under the Act to determine this dispute. The Respondent testified that her relationship with the Applicant was one of a roommate occupant situation and not a tenancy agreement under the Act. The Respondent testified that at the start of 2016 she took occupancy of the dispute home which was a three bedroom single family dwelling home, with another bedroom located in the basement portion of the home.

The Respondent testified that the home was provided to her use and occupancy by the owner who was a family friend and was allowing her to reside there with her husband and daughter for a nominal amount of rent. The Respondent stated that while she pays rent to the owner of the house she has no tenancy agreement with him and occupancy is being provided out of generosity rather than a tenancy agreement.

The Respondent testified that they took out an online advertisement on Castanet for a roommate to occupy the bedroom in the basement portion of the home for rent at \$750.00 per month. The Respondent explained that they then provided the one bedroom in the basement to the Applicant for rent as a roommate. The Respondent testified that it was made clear to the Respondent that this was a roommate situation and that it was not a landlord and tenant relationship before the Respondent moved in. The Respondent explained that it was for this reason that a tenancy agreement was not signed by the parties and there was nothing in writing to suggest that it was.

The Respondent confirmed that the Applicant provided her with a \$375.00 security deposit before the occupancy began on July 1, 2016 and that for the time the Applicant resided in the home, the Respondent did not move out and they resided in the home together. The Respondent stated that the Applicant was given exclusive use of the basement portion but that the internal door from the basement to the upper portion was rarely locked; it was only on some occasions that the Respondent locked this door if the Applicant had unknown guests there. The Respondent confirmed that she had free and able access to the basement portion but that she did not enter this area without giving notice to the Applicant. However, this was done out of courtesy rather than a legislative requirement.

The Applicant testified that she saw an advertisement for rental of a bedroom in the basement portion of the home. The advertisement was provided into evidence but did not show the date, time and source of the posting. The advertisement read:

*“1 bedroom ground level suite laundry available , no smoking , no pets, no crackhead junkies , \$750 [Respondent’s phone number] single working person, or maybe couple , available july 1”*

[Reproduced as written]

The Applicant testified that she paid the Respondent a security deposit and rent in cash for this tenancy for which she was not provided with any receipts. The Applicant testified that the Respondent did not specifically inform her that this was not a landlord and tenant relationship. However, the Applicant stated that the Respondent did inform her that she did not want to complete a tenancy agreement or do any paperwork for this tenancy because she was not legally allowed to have anyone residing in the basement.

The Applicant argued that the basement portion of the home was a separate unit as the Applicant and Respondent used separate doors to access their portions of the home. The Tenant testified that the basement portion was for her own exclusive use and that the internal door was always locked. The Applicant stated that the Respondent informed her that it was a fixed term tenancy which would continue on a month-to-month basis.

The Applicant then referred to several text message communications between the parties provided as evidence for this hearing in which the Respondent referred to the Applicant as the “tenant” as well as making references to other “tenants” the Respondent had previous to the Applicant taking occupancy. The Applicant then pointed to a text message in which the Respondent states that the Applicant must follow the “landlord’s rules” and that the Respondent gave her written notices to enter the basement portion.

The Respondent replied stating that the advertisement the Applicant was relying on did not reflect the one that was posted on Castanet by the Respondent’s husband as it had not date it was posted and where it was posted to. The Respondent disputed the Applicant’s evidence that occupancy started on a fixed term submitting that it was only on a month-to-month basis. The Respondent agreed that she had referred to the Applicant and previous occupants as “tenants” in her text message communication but that this was meant to be more a term of communication than being an admission that there was a landlord and tenant relationship between the parties.

The Respondent called her previous roommate as a witness to the hearing. The witness provided affirmed testimony that when she occupied the rental unit prior to the Applicant taking occupancy, her relationship with the Respondent was a roommate situation and that there was no tenancy between her and the Respondent. The witness confirmed that she rented a room in the upper portion of the home and resided with the Respondent. However, the Respondent did give the witness written notices of entry but this was out of courtesy.

The Applicant cross examined the witness and asked whether the witness had been provided with rules for laundry and rules for residency. The witness replied stating that she had been provided with instructions about laundry but this was done as an informal agreement on days laundry could be done and that she was not given any rules as she understood her conduct at the home. The Applicant submitted that the Respondent regularly posted rules to the basement door which referred to her as a Landlord and that the basement was a separate unit to the upper portion.

### Jurisdictional Findings

Section 1 of the Act provides for the definition of a landlord in residential tenancies. In particular it states that a landlord is 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.

The Act only has jurisdiction in disputes between a landlord and tenant. Therefore, I must first determine if the Respondent in this case is a landlord as defined by the Act. In this respect, I turn to Policy Guideline 19 which provides guidance on the topic of subletting and assigning tenancies. In particular, I turn to the section of this guideline titled "Occupants/roommates". This states in part:

*"Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act."*

*The use of the word 'sublet' can cause confusion because under the Act it refers to the situation where the original tenant moves out of the rental unit and has a subletting agreement with a sub-tenant. 'Sublet' is also used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. In determining if a scenario such as this is a sublet as contemplated by the Act, the arbitrator will assess whether or not the relationship between the original tenant and third party constitutes a tenancy agreement and a landlord/tenant relationship, as discussed in the "sublets as contemplated by the RTA" section above. If there is a landlord/tenant relationship, the provisions of the Act apply to the parties. If there is no landlord/tenant relationship, the Act does not apply..."*

[Reproduced as written]

Based on the foregoing, I find that in this case, the Respondent did not move out of the dispute home when occupancy was provided to the Applicant and therefore the Respondent does not meet the definition of a landlord as defined by the Act.

In addition, I find that the parties failed to establish that the oral agreement for the Applicant to occupy the basement portion of the home went beyond that of a landlord and tenant relationship. This is because no written tenancy agreement was entered into and the parties provided conflicting testimony of what was agreed to by the parties before occupancy was granted by the Respondent.

While the exchange of a security deposit may suggest that a tenancy has been established, I find that this alone is not sufficient evidence that an oral tenancy agreement was entered into in the absence of a written tenancy agreement. I also find that reference to the parties as "landlord" and "tenant(s)" in text message conversation is not sufficient to show that a tenancy agreement under the Act was established.

I find the Applicant failed to establish that she was given exclusive use and possession of the basement unit by the Respondent. In this case a tenancy agreement may have proved useful in establishing what was considered to be the rental unit that the Respondent has exclusive use and possession of as a tenant. I find the Applicant failed to establish that the Landlord was legally restricted from entering the basement portion of the home and the parties' evidence in this respect conflicted. Therefore, I am only able to find that the Respondent's evidence and was not compelling enough to suggest otherwise on the balance of probabilities.

Conclusion

As a result of the above findings, I conclude that the Respondent cannot be considered a landlord under the Act. Furthermore, I find, on a balance of probabilities the Applicant has failed to establish that a tenancy exists between the parties for the dispute home. Therefore, I find there is no jurisdiction in this matter and I decline to deal with the Application. The parties are at liberty to seek legal advice regarding this dispute.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 04, 2016

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Residential Tenancy Branch