



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPB, ET, FF  
LAT, LRE, MNDC, FF

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants. The landlords have applied for an Order of Possession for breach of an agreement, for an order ending the tenancy early, and for a monetary order for recovery of the filing fee for the cost of the application. The tenants have applied for an order limiting or setting conditions on the landlords' right to enter the rental unit; for an order allowing the tenants to change the locks to the rental unit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords.

Both named tenants, and one of the named landlords attended the hearing with legal counsel.

At the commencement of the hearing, counsel for the landlords submitted that the *Residential Tenancy Act* does not apply, and the hearing commenced on that issue alone. All parties who attended the hearing gave affirmed testimony and were given the opportunity to question each other.

### Issue(s) to be Decided

Does the *Residential Tenancy Act* apply to this dispute?

### Background and Evidence

**The parties agree** that the landlord who attended the hearing (LK) is the daughter of the other named landlord (AS). The tenants are mother (PR) and her son (SV). Landlord (LK) does not reside in the same community as the residential property.

**The landlord** testified that she received a call that her 81 year old mother had become extremely ill. She had a conversation with the tenant, (PR) who was a previous co-worker,

and the tenant offered to drive her there because she was going to look for property in the area. The parties travelled to the community where the landlord's mother and step father reside on June 29, 2016, stopping at the hospital before going to the residential property. The landlord was horrified at her mother's critically ill condition. The tenant was knitting during the visit and the landlord was in the hospital room the whole time. The landlord's mother has been in hospital since June and has not returned home.

When the parties arrived, the landlord had made arrangements for them to stay in the family home, a log home on 12 acres. The landlord told the tenant she could stay in a guest area in the lower level and the landlord would stay in the upper level. The guest area is not a suite; there is no door separating it from the upper level.

The landlord's step-father has had 3 strokes, and his wife had been his care-giver. The landlord called home care and lock-box was put in place, and care aids were attending the home 3 times per day. Further, he got angry when the tenant put items in the bathroom in the lower level because that's the bathroom he uses to shower. Several times he asked the landlord what the tenant was doing there. In September he was taken to acute care and has not returned.

On October 29, 2016 the landlord went to the residential property to winterize the house at her mother's request. When she arrived, the tenant's car was parked in the driveway of the upper unit, and the tenant (PR) was in the upstairs kitchen drinking coffee in her pajamas and housecoat. The landlord asked what she was doing there. She appeared to be living there. There was fresh food in the fridge in the upper level of the home, and canning. The tenant went downstairs and both tenants stayed there during the time that the landlord was there.

At no time did the parties enter into an agreement for the tenant and her son to stay in the residential property in exchange for caring for the landlord's parents. The landlord further testified that at no time did her mother make such an agreement with either tenant and was not mentally capable of doing so.

**The tenant (PR)** testified that she is a Registered Care Aid and was asked by the landlord (LK) to assist the landlords with day-to-day care, housework and maintaining the property. The parties went to the hospital upon arriving in the community, and the tenant spoke with the landlord (AS) who was fine, happy and alert. She intended to be home from hospital soon and the parties talked about the tenant and her son entering into an agreement for board and room in exchange for maintaining a huge garden, caring for the landlord and her husband, and housework. On June 30, 2016 the tenant went back to pick up her son and the two arrived at the residential property on July 1.

On July 3, 2016 the tenant drove the landlord (LK) to the bus depot so the landlord could return home. At no time was there any discussion that the tenants leave by July 4, 2016, despite many phone conversations.

The elderly husband of the landlord (AS) went into hospital in September and then into full care in October and has not returned home. However, the tenants still maintain the property as agreed. The tenants understood that they were to be there until the beginning of August and the landlord (LK) would return to care for her parents, but that never happened.

There are 2 separate entrances to the lower level of the residential property to the outside, but no door separating the lower level from the upper level. There was food in the fridge because it was for the landlord's father.

The tenants are willing to abide by a notice to end the tenancy, but have not been served with any by the landlords.

**The second tenant** (SV) testified that a tenancy agreement can be verbal or written, and although he wasn't present at the time, he believes there was a verbal contract made. The distance between the previous home of the tenants and the residential property is about 400 km. The landlord (LK) spoke with the tenant about his cat upon his arrival on July 1, 2016. There was quite a bit of stuff to do, requiring a lot of effort to help the landlord's elderly step-father.

The landlord (LK) had discussed the tenancy with the tenants, involving the tenant (SV) and what was expected from the tenants, such as minor de-cluttering, helping the elderly step father shave, help with clothing, and that the tenants would be there to assist and maintain the property in lieu of rent. There was no discussion about it being a temporary arrangement, and the tenants had brought all of their belongings from their previous home.

### Analysis

The *Residential Tenancy Act* does not apply to tenancies, whether written, oral or implied where the tenant shares kitchen or bathroom facilities with the owner. In this case, the landlord testified that there is no door between the 2 suites and that her step father showers in the lower level. The step father and his wife resided in the upper level, but there is no separation between the 2 suites. The landlord also testified that the tenant was in the kitchen of the upper level in her housecoat and pajamas drinking coffee. The tenant testified that it was a board and room situation and duties to care for the owners and the property in lieu of paying rent. That in itself to me suggests shared accommodation with the owner. There was also fresh food in the fridge of the upper

level on October 29, 2016 which is not denied by either party, and the owners had not been there since September. Obviously the tenants used the kitchen in the upper level.

I find that the parties did share kitchen and bathroom facilities, and the *Residential Tenancy Act* does not apply.

### Conclusion

For the reasons set out above, I decline jurisdiction with respect to this tenancy pursuant to Section 4(c) of the *Residential Tenancy Act*.

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: December 15, 2016

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Residential Tenancy Branch