



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RP, PSF, LRE, OPT, AAT, LAT, FF, O

### Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"), pursuant to section 46;
- an order that the landlord make repairs to the unit, site or property pursuant to section 33;
- an order that the landlord provide services or facilities required by law pursuant to section 65;
- an order suspending or setting conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an Order of Possession for the tenant, pursuant to section 54;
- an order allowing the tenant and the tenant's guests access to and from the unit or site pursuant to section 70;
- authorization for the tenant to change the locks to the rental unit pursuant to section 70; and
- recovery of the filing fees for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing the applicant requested an adjournment of the scheduled hearing stating she was recently hospitalized and required additional time to prepare documentary evidence.

Also at the outset of the hearing the respondent stated that he was not a landlord of the dispute address as he is merely the executor of the estate of the property owner.

Issue(s) to be Decided

Do I have jurisdiction under the *Act* to consider the application for dispute resolution?

Background and Evidence

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 claims and my findings are set out below.

The applicant and respondent are siblings. Their mother was the owner of the dispute address and passed away in April, 2016. The respondent is the executor of their mother's estate. The applicant lived with their mother in the dispute address since their father passed away several years ago. The parties agreed that the dispute address is a single-family detached home with the applicant having use of a private bedroom and bathroom and sharing all other facilities, including the kitchen, with the mother when she was alive.

The respondent testified that he believes the registered owner of the dispute address was their mother. The respondent testified that while he is the executor of their mother's estate he has retained lawyers to manage the administration and has very little knowledge regarding the details of the estate. The respondent stated that he believes the estate, including the dispute address, is to be divided into equal one third shares and distributed among the surviving children, including both the applicant and respondent. The respondent testified that in addition to issuing the 10 Day Notice he has had numerous interactions with the applicant, both personally and through legal counsel, in an attempt to have the applicant removed from the dispute address.

Analysis

The definition of a "landlord" is outlined in part in the following terms in section 1 of the *Act*:

**"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);

It is possible that the respondent, as either the executor of the estate of their mother, the property owner, or as an heir and successor to their mother, may fit the definition of a landlord. However, there is insufficient evidence before me to demonstrate that there was a tenancy agreement that would fall within the *Act*.

I do not find the respondent's use of the Residential Tenancy Branch's form to be conclusive as it appeared that the parties made use of whatever resources were available in their conflict. The parties offered conflicting testimonies, sometimes conflicting with their own earlier statements, regarding the issue of whether rent was payable or collected regularly. Based on the totality of the evidence before me I find that there is insufficient information to conclude that there was a tenancy that would fall within the jurisdiction of the *Act*.

I also note that section 4(c) of the *Act* reads in part as follows:

- 4      *This Act does not apply to...*
  - (c) *living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,...*

The evidence of the parties is that the applicant resided in premises which shared the kitchen facilities with the mother, the owner of this home. Under these circumstances and based on the evidence before me, I find that even if the parties intended upon entering into a tenancy agreement as contemplated under section 1 of the *Act*, the *Act* would not apply to this tenancy. 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: January 3, 2017

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Residential Tenancy Branch