



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with an application for an order of possession and a monetary order based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to s. 46 of the *Residential Tenancy Act* (the “Act”). The applicant also sought recovery of the filing fee pursuant to s. 72.

The applicant attended the hearing. The respondent was represented by her son, as her power of attorney, and counsel. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to respond to the submissions of the other party.

The 10 Day Notice is with respect to “unpaid rent” in July, 2016 and “unpaid utilities/property taxes 2008 – 2015”. It is dated November 8, 2016, and has an effective date of November 18, 2016. The parties agreed it was received on November 8, 2016.

Service of the application for dispute resolution and the notice of hearing were confirmed by the respondent.

At the outset of the hearing, counsel for the respondent raised the question of jurisdiction in light of an outstanding lawsuit. Another related issue involves whether the relationship between the parties qualifies as a tenancy. Neither party had submitted the pleadings for the legal action in evidence. The applicant had not submitted any evidence in support of his application, and the respondent’s counsel could not confirm that the respondent’s evidence had been served on the applicant in advance of the hearing.

I asked that both parties send the pleadings to the Residential Tenancy Branch by the close of business day on the day of the hearing. It was agreed that I would issue a preliminary decision with respect to question of jurisdiction and that if I considered that I had jurisdiction, another hearing would be convened to hear the substance of the

dispute, and a schedule for the exchange and submission of evidence would be made in advance of that second hearing.

### Issue(s) to be Decided

Do I have jurisdiction under the Act to consider the application?

### Background and Evidence

The applicant testified that he purchased property in or around 2008 and built a home on it. His family approached him about renting the home, and he agreed. He submitted that he and his family entered into an oral tenancy agreement under which his mother would make the mortgage payments at the time they were due in exchange for being able to reside in the house.

The applicant also testified that his mother vacated the residence on January 4, 2017. Accordingly, he restricted the relief he was seeking to a monetary order for unpaid July “rent” in the amount of \$3,039.37 and unpaid property taxes 9,529.21 between 2008 and 2015. He said payment had been made for all months after July, 2016, with the exception of January, 2017.

Counsel for the respondent advised that the respondent filed a legal action against the applicant in October of 2016. The 10 Day Notice and the subsequent application to the Residential Tenancy Branch were filed shortly thereafter by the applicant in this matter. The applicant agreed that there is a legal action before the courts that involves, among other things, the question of the ownership of the residence involved in what he alleges is a tenancy. He also advised that his mother has registered a certificate of pending litigation against that residence.

I have reviewed the Notice of Civil Claim, filed October 13, 2016, and the Response to Civil Claim, filed November 2, 2016. The style of cause and action number are included on the cover page of this decision. The Notice of Civil Claim alleges that the respondent to the application before me is the beneficial owner of the residence. The Response to Civil Claim asserts, however, that her contributions to the property and the residence were made only in her capacity as a tenant.

### Analysis

Section 58(2) of the Act requires me to resolve a dispute that has been accepted under s. 58(1), subject to certain limited exceptions. One such exception is set out in s. 58(2)(c), and involves where “the dispute is linked substantially to a matter that is before the Supreme Court.”

The question of the ownership of the residence at issue is directly before the Supreme Court in the legal action filed by the respondent to the dispute before the Residential Tenancy Branch. The Court's decision will be directly relevant to whether there is a tenancy relationship or not. The matter before me is clearly and substantially linked to a matter before the Supreme Court, and 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 s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 31, 2017

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Residential Tenancy Branch