



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      AAT, LRE, OLC, OPT, PSF, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order for the landlord to allow access to the rental unit; to suspend or set conditions on the landlords right to enter the rental unit; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; to obtain an Order of Possession for the rental unit; for the landlord to provide services or facilities required by law; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The parties attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The parties provided documentary evidence to the Residential Tenancy Branch. The respondent confirmed receipt of the applicant's evidence and agreed he did not serve his evidence to the applicant. I have therefore not considered the respondent's documentary evidence pursuant to rule 3.12 of the Rules of Procedure. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issues

The matter of jurisdiction was raised by the respondent; the respondent testified that this occupation of the unit does not fall under the *Residential Tenancy Act*. The

respondent testified that this is his home and all his possessions are kept there. The respondent stays at a friend's home when he is away working but comes back to live in his home when he is not working. He did let the applicant stay in his home free of any rent charges because he had been a friend of the applicant's father for 40 years. The applicant was allowed to stay and help the respondent out doing some work. No tenancy agreement was entered into either written or verbal. No security deposit was paid by the applicant and no rent was asked for or paid by the applicant.

The applicant agreed that he did not pay a security deposit and that he was not required to pay any rent.

### Analysis

I have considered the issue concerning the Jurisdiction of the Residential Tenancy Branch in this matter and whether or not a tenancy existed in between these parties. I refer the parties first to s. 4(c) of the Act which states:

*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 respondent testified that this is his primary residence And all his belongings are there. I must conclude therefore that if the respondent was there at the same time as the applicant that they would share a kitchen and bathroom facilities and therefore the Act would not apply.

The Residential Tenancy Policy Guidelines #9 also provides guidance on the difference between a tenancy and a licence to occupy. This guideline clarifies the factors that distinguish a tenancy agreement from a license to occupy. The definition of "tenancy agreement" in the *Residential Tenancy Act* includes a license to occupy.

In considering whether or not a tenancy has been created I have weighed up some of the factors that weigh against a tenancy being created.

- The tenant was not required to pay rent
- Payment of a security deposit was not required.
- The owner, allowing occupancy, retains access to, or control over, the rental unit and continues to live there when he not away working and has all his possession there.
- The owner retains the right to enter the rental unit without notice.

Having weighed up all these issues It is my decision that this is a personal relationship in which the respondent has allowed the tenant to share the unit without a tenancy being created and with no other business considerations that would indicate a tenancy had been created.

### Conclusion

Due to the above it is my decision that I do not have jurisdiction in this matter. The parties are at liberty to pursue this claim in a different legal forum.

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: April 05, 2017

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Residential Tenancy Branch