



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, FF

### Introduction

This hearing was scheduled to deal with applications filed by each party. Before me was a Tenant's Application for Dispute Resolution to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and a Landlord's Application for Dispute Resolution for an Order of Possession for unpaid rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Initially, the landlord's position was presented by a "property manager" who is also the grandson of BG, an owner of the property. The property manager testified that the amount of rent payable by MS was set at \$600.00 per month starting in January 2017, when MS moved into the rental unit with the other co-owner, KG. The rental unit was described as a two bedroom basement suite. BG and KG are mother and son. BG resides in the upper unit and KG had been living in the basement suite but is now living upstairs with BG. A written tenancy agreement with MS was not prepared or signed.

I heard from the property manager that shortly after MS moved into the rental unit KG moved upstairs with BG to get away from the tenant's drug activities, among other things, and that her rent payable remained at \$600.00 per month. The property manager stated that KG received a cheque from Income Assistance on behalf of MS as a partial rent payment of \$375.00 for the month of January 2017 and another payment of \$375.00 for the month of February 2017. The property manager testified that no payment was received for March 2017 and the cheque for April 2017 was returned to Income Assistance. MS was expected pay \$225.00 of her own money in addition to the rent received from Income Assistance.

MS testified that she was "supposed" to live with KG in the rental unit, with potential to become a couple, but that did not happen. MS testified that rent was only \$375.00 per month as this is the maximum amount Income Assistance will pay for shelter, although

MS acknowledged that she also works as an escort. MS was of the position that Income Assistance paid rent for all months, although she acknowledged that BG refunded her \$200.00 of one of the payments so that she would move out. I noted that when MS filed her Application for Dispute Resolution she applied for a fee waiver and the benefit statement she produced shows that a rent payment was sent to KG for the month of March 2017. As for April's rent payment MS stated that she was unaware until this hearing that the cheque had been sent back to Income Assistance.

After hearing initially from the property manager and MS, I determined it necessary to further explore whether the *Residential Tenancy Act* applies to this living arrangement and whether I have jurisdiction to resolve this dispute. My authority to resolve disputes is delegated to me by the Director of the Residential Tenancy Branch under the *Residential Tenancy Act* ("the Act"). Accordingly, for me to take jurisdiction, the Act must apply to the living accommodation. The Act applies to tenancy agreements between a landlord and a tenant with respect to possession of a rental unit; however, there are certain living accommodations that are exempt for application of the Act, as provided under section 4.

Since it was apparent to me that an agreement for possession of the rental unit was entered into between KG and MS I called KG to provide direct testimony. Below, I have summarized the parties' respective positions as to the formation of this living arrangement.

### **Testimony of KG**

BG and KG are co-owners of the property. KG had been living in the rental unit with a roommate (referred to by initial "M" in this decision) until M died in November 2016. M was a drug dealer and MS was M's girlfriend. When M was still alive MS would come to the rental unit frequently to visit M and do drugs.

At some point KG had lent money to MS, although the amount, date and the purpose of the loaned money was not disclosed. KG and MS derived a plan that involved committing welfare fraud so that Income Assistance would send rent money for MS to KG and KG would apply the money received from Income Assistance to the debt that MS owed him. KG signed a Shelter Information document indicating MS had a tenancy with KG and that rent payable was equivalent to the maximum amount of shelter allowance payable by Income Assistance. To make the situation appear "copasetic" he gave MS a room in the basement suite where he also resided.

## Testimony of MS

MS also stated that she had spent time at the rental unit when M, her boyfriend, was still alive and that when she visited the property KG was also there doing drugs with them. After M died, she was walking down the street and KG approached her. She provided “escort” services to KG and after telling him she was homeless he offered her the basement suite. KG was supposed to live in the basement suite with her and they were going to explore the possibility of becoming a couple. However, MS testified that KG never did live in the suite with her. MS testified that rent was only \$375.00 as this was the maximum amount Income Assistance would pay and KG signed the Shelter Information document indicating that is the amount of rent payable. MS did not acknowledge or deny a debt owing to KG.

After hearing from both parties I expressed reservations as to whether the Act applies to this living arrangement and my jurisdiction to resolve this dispute. I informed the parties as to the exemption provided under section 4(c) of the Act. Section 4(c) specifically excludes the following from the Act:

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

After I informed the parties of section 4(c), MS began speaking out of turn and started speaking directly to KG indicating it would be upon them to work something out. After I instructed MS to refrain from speaking out of turn she proceeded to hang up her end of the telephone connection.

KG and the property manager were agreeable that this was a roommate dispute involving an owner of the property and the Act does not apply to this living accommodation.

### Issue(s) to be Decided

Is this living accommodation exempt from application of the *Residential Tenancy Act* pursuant to section 4(c) of the Act?

### Analysis

It was undisputed that KG is an owner of the property. I find that both KG and MS provided consistent testimony that KG has the right to reside in the rental unit with MS based upon the agreement they entered into. Each may have had an entitlement to

their own private bedroom but I am satisfied that both KG and MS have the right to have shared access to the kitchen and bathroom in the basement suite.

Although the parties provided disputed testimony as to whether KG ever did use the kitchen or bathroom in the rental unit while MS has been residing in the rental unit, I find that disputed position inconsequential since KG has the right to do so at any time. I take this position as I find it would be senseless to find the Act applies one minute and not the next once KG uses the kitchen or bathroom in the basement suite. Rather, what I find most compelling in determining whether the living accommodation is exempt from the Act is that KG has the right to share the kitchen and bathroom with MS under their agreement.

In light of the above, I am of the view that this is a dispute between an owner of a property and the owner's roommate and that this living accommodation is exempt from application of the Act pursuant to section 4(c) of the Act.

Since this living accommodation is exempt from the Act I decline jurisdiction to resolve this dispute.

### Conclusion

I have declined to accept that the Act applies to this living accommodation or that I have jurisdiction to resolve 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 *Residential Tenancy Act*.

Dated: April 12, 2017

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Residential Tenancy Branch