



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC O RR FF

### Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (“the Act”) for: cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause pursuant to section 47; an order to allow a reduction in rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The respondent confirmed receipt of the applicant’s Application for Dispute Resolution as well as his evidence sent by registered mail.

### Preliminary Issue: Jurisdiction

At the outset of the hearing, the issue of whether the Residential Tenancy Branch has jurisdiction to hear this matter was raised. The respondent and applicant both agreed that neither of them signed a written tenancy agreement with respect to this living arrangement. The applicant testified that he pays the respondent \$595.00 on the last day of each month so that she can then pay the entire amount to her landlord. He testified that the respondent holds a \$300.00 security deposit that he paid when he moved in. The applicant testified that he answered an advertisement for a shared accommodation. The applicant also testified that the respondent should have advised him if this arrangement would not be subject to the *Residential Tenancy Act*.

The respondent testified that, from the outset of this living arrangement, the applicant was considered her roommate. The respondent and applicant testified that they both reside in the same “rental unit” – that the accommodations (upper main floor of a house) are shared between the two of them. The applicant testified that he has his own room but that he and the respondent share the common space in their unit including the kitchen and bathroom.

The respondent testified that she has authorization from her landlord to sublet. She testified that she did not get authorization to sublet to the applicant in this matter.

Analysis: Preliminary Issue/Jurisdiction

In considering the evidence and submissions by both parties, I refer to the below summarized facts in determining how their agreement relates to the *Residential Tenancy Act*,

- The applicant and respondent both reside in the unit;
- The respondent rents the unit from a third party;
- The respondent accepts “rent” from the applicant and provides it to a third party;
- The bedrooms are separate for each party;
- The parties share a kitchen and bathroom; and
- There is no written agreement between the applicant and respondent.

For a matter to be considered under the *Residential Tenancy Act*, both parties to the application must have a role that fits within the scope of the *Act*. To consider a matter under the *Act*, a tenancy must be formed with both a tenant and a landlord. Under the *Residential Tenancy Act* definitions section (section 1), a landlord is defined;

**"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 owner, ...
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);...
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this *Act* in relation to the rental unit;
- (d) a former respondent, when the context requires this;  
[emphasis added]

Based on the evidence before me, the respondent does not own the rental unit or act on the behalf of the owner in a landlord capacity. The applicant has no formal relationship with the owner, based on his testimony: there is no written agreement or verbal agreement with the requisite residential tenancy terms. Contrary to the wording of

section 1(c) above, the respondent in this matter is a tenant occupying the rental unit and is not considered a landlord under subsection 1(c) or any of the other definitions of a landlord.

Both parties testified that the respondent offered a “room” with shared kitchen and bathroom to the applicant. The respondent testified that she accepted money from the applicant each month and provided it to her landlord. I note that taking a “security deposit” from another resident does not on its own constitute a residential tenancy.

I refer to Residential Tenancy Policy Guideline No. 19 relating to assignments and sublets. To create a sublet scenario, the original tenant must move out and lease the rental unit to the sub-tenant. Residential Tenancy Policy Guideline No.19 addresses alternative agreements, including assigning and subletting. The applicant submitted that he should be considered a sub-tenant. The Policy Guideline states,

A sublease is a lease given by the applicant... of residential premises to a third person (the sub-tenant or sub-lessee). ... The sub-tenant does not take on any rights or obligations of the original tenancy agreement that are not contained in the sub-agreement, and the original lessee remains the tenant of the original lessor, and is the sub-landlord of the sub-tenant.

The policy with respect to a sublease is that the sub-landlord (the original tenant) retains their obligations with respect to the tenancy. The policy further states;

A tenant may assign or sublet his or her interest in a tenancy agreement or lease with the consent of the landlord. ... the proposed new tenant is not a party to the tenancy agreement until such time as the respondent has agreed to assignment or sublet, and the formal transfer is made.

A fundamental requirement of any tenancy is an agreement, a meeting of the minds. As with all tenancy matters, this agreement should address a variety of tenancy related issues including but not limited to the use of the unit itself as well as of the common areas, services and facilities. The respondent did not seek the consent of her landlord when the applicant moved in. While there may have been some informal and changeable understanding between the parties, the evidence of both the applicant and the respondent is evidence that they were roommates, perhaps co-tenants.

Based on the party’s description of the rental arrangement, I find that this living arrangement was neither a tenancy nor a sublet and therefore the arrangement is not

governed by the *Residential Tenancy Act*. As a result, I find that I do not have jurisdiction in this matter.

Conclusion

I decline to hear this matter as I do not have jurisdiction.

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: May 26, 2017

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Residential Tenancy Branch