



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      O OLC SS PSF

### Introduction

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- an Order directing the landlord to comply with the *Act* pursuant to section 62 of the *Act*;
- an Order directing the landlord to provide services or facilities required by law pursuant to section 65 of the *Act*;
- an Order allowing the tenant to serve the landlord by way of substituted service pursuant to section 71 of the *Act*; and
- other unspecified relief.

Landlord R.S. and counsel for the landlords, R.S., (the “landlord”) along with the tenant appeared at the hearing. Both parties were provided a full opportunity to be heard, to present testimony, to make submissions and present evidence.

The landlord confirmed receipt of the tenant’s application for dispute resolution after having received an email from the tenant regarding the hearing. The tenant also served both landlords individually by way of Canada Post Registered Mail on October 27, 2017. Pursuant to sections 88 & 89 of the *Act*, I find the landlords to have been duly served by the tenant.

### Preliminary Issue #1 – Substituted Service

The tenant stated that he wished for an order be made allowing him to serve the landlords via email, a manner not prescribed by the *Act*, because he did not know if the landlords could receive Canada post mail at the address he has for them in the province.

Both parties attended the hearing and confirmed knowledge of the proceedings. The

tenant's evidentiary package contained two Canada Post Registered Mail receipts that he explained were attempts on his part to serve the landlords with the application for dispute, along with his evidentiary packages. As both parties attended the hearing, the tenant's application for substituted service is moot. The tenant must re-apply for substituted service, should he wish to pursue further relief against the landlords.

### Preliminary Issue #2 – Jurisdiction

At the outset of this hearing, both parties explained that they had questions regarding my ability to consider the tenant's application under the *Act*. The tenant argued that he wished for jurisdiction to be found under the *Act* because he hoped to possibly instigate future litigation against the landlords. Counsel for the landlords presented submissions countering the tenant's position and arguing that no jurisdiction should be found.

During the hearing, the tenant alleged that a tenancy agreement existed between himself and the landlord, and that the landlords had illegally evicted him from the property, as they had responsibility to issue him a 1 Month Notice to End Tenancy and had not done this.

Both parties agreed that no rent was ever exchanged between the parties and that the tenant was hired on by the landlords to perform caretaker work on the property. The tenant arrived on the property on May 5, 2017 and departed on November 15, 2017. Both parties acknowledged that the tenant was required to place a figure of \$400.00 on his shelter information, so that he could qualify for government benefits; however, it was agreed at the hearing that the tenant and landlords never had an intention to collect this money. The parties both stated that in order to qualify for the government benefits he had requested, the tenant was required by government regulations to put down an amount for rent paid.

In addition to the above, the parties agreed that the tenant was to occupy the premises for the winter months as a caretaker for the property but that due to a disagreement between the landlords and the tenant, the tenant was asked to leave the property.

I find that I do have jurisdiction to hear this matter, as section 2(1) of the *Act* states, "this Act applies to tenancy agreements, rental units and other residential property." A tenancy agreement is defined in section 1 of the *Act* as, "an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit."

Despite my finding, I do not find that the landlord owed any duty to the tenant to issue him with a 1 Month Notice to End Tenancy. Based on the oral testimony presented to the hearing by the tenant and the submissions presented to the hearing by counsel for the landlords, I do not find that parties entered into a tenancy agreement but were rather parties to a license to occupy.

*Residential Tenancy Policy Guideline #9* states, "A license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or *licensee*, is given permission to use a site or property, but that permission may be revoked at any time. Under a tenancy agreement, the tenant is given exclusive possession of the site for a term, which can include month to month. **The landlord may only enter the site with the consent of the tenant**...If there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created."

This *Guideline* continues by noting; Some of the factors that may weigh against finding a tenancy are:

- payment of a security deposit is not required;
- the owner, or another person allowing occupancy, retains access to, or control over, portions of the site;
- the owner, or other person allowing occupancy, retains the right to enter the site without notice; and
- the parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.

There was no evidence that the tenant ever had exclusive possession of a specific rental unit on the property. The tenant was permitted to occupy one of the vacant cabins, but it was understood by the parties that this was to be a mutually beneficial arrangement, whereby the tenant would be granted the licence to occupy the property, but was to perform certain tasks on the property while the landlord was away. Furthermore, it was agreed that no rent was ever to be paid by the tenant to the landlord. The rent which the tenant purported to pay, was merely a theoretical payment which was to be made by the tenant towards the landlord, so that the tenant could qualify for certain benefits. Both parties acknowledged at the hearing, that the landlord had no intention of ever collecting rent from the tenant.

The tenant therefore had a licence to occupy the property but that permission could be revoked at any time. The tenant's application for an order directing the landlord to comply with the *Act* and to provide service or facilities required by law is dismissed.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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: December 12, 2017

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Residential Tenancy Branch