



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET FF

### Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) pursuant to the *Residential Tenancy Act* (“Act”) by the landlord to end a tenancy early and obtain an order of possession due to excessive damage to the rental unit and to recover the cost of the filing fee.

Legal counsel (“counsel”), an articulated student for the landlord and a witness for the landlord who did not testify, attended the teleconference hearing. The landlord submitted in evidence registered mail tracking information that confirms the respondent was served by registered mail on December 7, 2017. Pursuant to section 90 of the *Act* I find the respondent was deemed served five days later on December 12, 2017.

### Preliminary and Procedural Matters

The first issue that I must decide is whether the *Act* has jurisdiction over the parties in order to proceed with the application.

Counsel confirmed that a written tenancy agreement does not exist and that the respondent has never paid rent and has never been approved by the landlord as a tenant. Counsel stated that landlord considers the respondent, K.W. to be an occupant with no rights under the *Act* and that he should have vacated when the former tenant J.B. vacated the rental unit. Counsel also confirmed that the landlord has not created a verbal tenancy agreement with the respondent either.

Counsel for the landlord confirmed their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator. Counsel for the landlord confirmed their understanding that the decision would be emailed to the landlord and counsel.

### Analysis

Based on the above, and on a balance of probabilities, I find the following.

I agree with the submissions of counsel that the respondent is not a tenant under the *Act* based on there being no tenancy agreement and that the respondent has not paid rent to the landlord and has not been approved by the landlord as a tenant. Therefore, I find the respondent is an occupant and not a tenant. Occupants have no rights or obligations under the *Act*.

Given the above, I find that I do not have jurisdiction to hear this dispute under the *Act*.  
**The respondent is not a tenant and has no rights under the *Act*.**

I do not grant the recovery of the cost of the filing fee as the *Act* does not apply.

### Conclusion

I decline to hear the applicant's application due to lack of jurisdiction under the *Act*.

The respondent is not a tenant and has no rights under the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: January 19, 2018

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Residential Tenancy Branch