



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

OPR, FFL

### Introduction

This decision pertains to the Applicant's application for dispute resolution made on February 13, 2018, under the *Residential Tenancy Act* (the "Act"). The Applicant seeks the following relief:

1. an order of possession for unpaid rent; and,
2. a monetary order granting recovery of the filing fee.

A hearing was convened and both the Applicant and Respondent attended the hearing before me and were both given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application will be considered in my decision.

The Respondent confirmed receipt of the Applicant's application for dispute resolution hearing package on February 20, 2018. Pursuant to sections 89 and 90 of the Act, I find that the Respondent was duly served.

### Preliminary Issue: Jurisdiction to Hear Matter

Upon my review of the parties' evidence submitted in advance of the hearing, and while listening to the parties' testimonies, it soon became apparent that my jurisdiction to hear the application was the first issue to be dealt with. The Applicant argues that a tenancy agreement exists. The Respondent disagrees.

The Applicant testified that the parties met, and became friends, in August 2016. They soon became "more than friends" and moved in together shortly thereafter. (At that time, they lived in a different residence than the present one.) In June 2017, the parties moved into a house that the Applicant contends was purchased under the Applicant's name. The Applicant submitted into evidence a mortgage statement that references the Applicant and two additional family members as the mortgagors.

The Respondent testified that they in fact had bought the house together, and had given the

Applicant \$25,000.00 toward the down payment. The Respondent referenced a receipt for the amount, but did not submit this into evidence. The Applicant agreed that the Respondent had made this contribution toward the down payment.

Both parties lived in their new home until the Fall, when the relationship fell apart. The Applicant rented a storage locker and moved some belongings into it on September 22, 2017. On November 1, 2017, the Applicant moved out of the house. The Applicant returned to the property around New Year's Eve for two to three days. The Respondent continues to reside in the house, along with a small child and a dog.

The Applicant testified that both parties have contributed to the mortgage since June 2017, each contributing about half. The Respondent continues to provide funds to the Applicant for the mortgage. The parties hold a joint bank account from which the mortgage payments were withdrawn from the time of the house purchase, until around the time of the Applicant's departure, at which point the mortgage payments were withdrawn from the Applicant's personal bank account. The Respondent confirmed this testimony and submitted into evidence a bank statement reflecting both parties as being account holders on a joint account. Over the past several months, the Respondent has deposited money into the joint account, from which the Applicant withdraws the money and deposits into their own personal account.

Both parties testified that the Respondent pays the hydro and gas bills, which are in the Applicant's name. The Respondent said that they did not pay the bills recently because the Respondent took money out of the joint account and paid the bills on their own.

Finally, the Respondent testified that the Applicant attempted to buy out the Respondent's interest in the property. The Applicant did not contest this statement.

In order to confirm my understanding of the particulars of the application, I asked the Applicant why they believed there existed a tenancy agreement. The Applicant submitted that such an agreement exists "because I let [the Respondent] stay there," and because "I own the property." I asked whether any terms of such an agreement were decided upon prior to their moving out, to which the Applicant testified there were none, other than that they had an expectation that the Respondent should be paying the bills. The Applicant testified that they wanted the Respondent out of the house so that the Applicant, and the Applicant's parents, could use and enjoy the property during the summer months. No further evidence was provided about the future use of the property.

The Respondent disputes that there exists a tenancy agreement, and submits that the Respondent has an interest in the property as a common law spouse.

### Analysis

In section 1 of the Act, a “tenancy agreement” means 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.”

Section 2 (1) of the Act explains that “Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, rental unit and other residential property.

Section 4 (c) of the Act states that the Act does not apply to “living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation”.

The testimony of both parties confirms that no tenancy agreement exists. I am not satisfied on the evidence that there was ever any agreement, express or implied, which established a relationship of landlord and a tenant. Further, both parties agreed that they lived in a conjugal-like relationship in the house from the time of purchase until the Applicant moved out. I infer from their testimony that they shared bathroom and kitchen facilities.

Accordingly, I find that in the absence of a tenancy agreement, and because the Applicant and Respondent shared bathroom and kitchen facilities, this Act does not apply and that I am without jurisdiction to consider the Applicant’s application because it is excluded by sections 2 (1) and 4 (c) of the Act.

I advised the parties that should they wish to resolve their issues, they should seek legal advice about the proper forum to resolve their dispute.

### Conclusion

I decline to hear the Applicant’s application as I have no jurisdiction under sections 2 (1) and 4 (c) of the Act.

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 19, 2018

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Residential Tenancy Branch