



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC

### Introduction

This hearing dealt with the Applicant's application pursuant to the *Residential Tenancy Act* ("Act") for an Order of Possession for cause and for unpaid rent pursuant to section 55.

The Respondent did not attend this hearing which lasted approximately 15 minutes. The Applicant appeared, represented by counsel, and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Counsel primarily represented the Applicant (the "Applicant").

The Applicant testified that a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") and 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") were both served on the Respondent on May 2, 2018 by posting on the rental unit door. The Applicant submitted into written evidence an affidavit of service from the process server who posted the notices. Based on the evidence I find that the 10 Day Notice and 1 Month Notice were each deemed served on the respondent in accordance with sections 88 and 90 of the Act on May 5, 2018, three days after posting.

The Applicant testified that the application for dispute resolution dated May 22, 2018 was served on the Respondent by posting on the rental unit door by the process server on May 31, 2018. The Applicant submitted into evidence an affidavit of service by the process server. Based on the evidence I find that the application for dispute resolution and evidence were deemed served on the respondent in accordance with sections 88, 89(2)(d) and 90 of the Act on June 3, 2018, three days after posting.

### Issue(s) to be Decided

Does the Respondent's occupation of the dispute property fall within the jurisdiction of the Residential Tenancy Act?

If so, is the Applicant entitled to an Order of Possession?

### Background and Evidence

The Applicant gave undisputed evidence regarding the following facts. The Applicant said that this is a tenancy that began in June, 2005. The rental unit is a basement suite in a detached home. No written tenancy agreement was prepared but there is an agreement that the respondent would pay a monthly rent of \$275.00. No security deposit was collected.

The Applicant said that since the Respondent moved in they have failed to pay any amount of money towards the monthly rent. The Applicant said that for over 13 years the Respondent has made no payment. The Applicant explained that they believe the Respondent is a criminal with violent tendencies and therefore they chose not to demand rent payment. The Applicant said that throughout the years of the occupancy there has been minimal contact between the Applicant and Respondent.

### Analysis

The definitions of a "tenancy" and a "tenancy agreement" are outlined in the following terms in section 1 of the *Act*:

**"tenancy"** means a tenant's right to possession of a rental unit under a tenancy agreement;

**"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 license to occupy a rental unit.

The Applicant gave evidence that the Respondent has never paid any rent, did not pay a security deposit, and there has been close to no interaction between the parties. While the Applicant testified that there was an agreement that the Respondent would pay \$275.00 monthly rent, no documentary evidence was provided of this agreement. The Applicant said that since the Respondent first occupied the property no attempts have been made by the Applicant to collect rent, a security deposit or any consideration of value for their occupancy. While the Applicant said that they were fearful of

retaliation from the Respondent, I do not find the explanation to be believable or reasonable. I find that the Applicant's submission that they allowed the Respondent to occupy the property for over a decade without paying rent or providing any consideration to be beyond the bounds of credulity and unbelievable.

Based on the evidence, I do not find that the relationship between the parties is a tenancy.

I am unable to consider the landlord's application to end a tenancy as I find that there is no tenancy agreement between the parties.

The Respondent is an occupant, and not a tenant under the definition of section 1 of the *Act*. Residential Tenancy Branch Policy Guideline #13 establishes that an occupant has no rights or obligations under the tenancy agreement. No Notice to End Tenancy is necessary as neither the Respondent nor the Applicant are governed by the *Act*. I cannot consider the application as I have no jurisdiction in this matter.

### Conclusion

I find that I do not have jurisdiction in this matter and I dismiss the application for dispute resolution.

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: July 13, 2018

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Residential Tenancy Branch