



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET, FFL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Applicant on October 25, 2018 (the "Application"). The Applicant applied for an order ending the tenancy early based on section 56 of the *Residential Tenancy Act* (the "Act"). The Applicant also sought reimbursement for the filing fee.

The Applicant appeared at the hearing with the witnesses who did not participate in the hearing until required. I did not hear from witness S.B. The Respondent appeared at the hearing. I explained the hearing process to the parties and answered their questions in relation to the process. The parties provided affirmed testimony.

The Applicant had submitted evidence prior to the hearing. The Respondent had not submitted evidence. I addressed service of the hearing package and evidence.

The Applicant testified that she served the hearing package on the Respondent in person at the rental unit on October 29, 2018. The Applicant called witness D.G. in relation to this. Witness D.G. testified that on October 29, 2018 she went with the Applicant to the rental unit and served papers on the Respondent. She did not know what the papers were. The Respondent was given an opportunity to ask witness D.G. questions.

The Respondent testified that the Applicant and witness D.G. were not telling the truth and that he was not served with the hearing package. The Respondent testified that he called the Residential Tenancy Branch and was advised of the necessary information to call into the hearing.

The Applicant testified that she served her evidence on the Respondent in person at the rental unit on November 6, 2018. She said the Respondent was outside at the time and that witness D.W. came with her. Witness D.W. testified that he went with the Applicant on November 6, 2018. He said they arrived, the Applicant knocked on the door and they waited for the Respondent to come out of the rental unit. He said the Applicant handed the Respondent an envelope with papers inside and then they left. Witness D.W. said he does not know the

Respondent personally. The Respondent was given an opportunity to ask witness D.W. questions.

The Respondent testified that the Applicant and witness D.W. are not telling the truth and that he was never served with the Applicant's evidence.

It is the Applicant who must satisfy me that the hearing package and evidence were served on the Respondent in accordance with the Act and Rules of Procedure. I am satisfied on a balance of probabilities that the Respondent was served with the hearing package based on the testimony of the Applicant which was supported by witness D.G.

I acknowledge that witness D.G. did not know what the package contained; however, the Respondent did not take the position that the package contained something other than the hearing package. He took the position that the Applicant and witness D.G. were not telling the truth.

The Respondent did not submit any evidence to show that he was not served as described such as evidence that he was out of town or not at the rental unit at the relevant time. This is so despite the Respondent being advised of the hearing information by the Residential Tenancy Branch. Our records show this occurred November 19<sup>th</sup>, four days before the hearing.

In the circumstances, I am satisfied the Respondent was served with the hearing package on October 29, 2018.

I am not satisfied that the Respondent was served with the evidence because the Applicant and witness D.W. gave conflicting testimony about how this occurred. I would have excluded the evidence as rule 3.14 of the Rules of Procedure requires the Applicant to serve her evidence on the Respondent.

Given I was satisfied of service of the hearing package, I proceeded and asked the parties about the tenancy relationship in this matter.

The Applicant took the position that her and the Respondent are roommates. She testified that she maintains a room at the rental unit address and therefore shares a bathroom and/or kitchen with the Respondent. The Applicant said D.L. is the owner of the rental unit address but that she has a purchase contract with D.L. for the rental unit address which was signed in 2016. She said it will be 2020 before she purchases the rental unit address outright. She agreed this was like a "rent-to-own" agreement. The Applicant advised that it is D.L. who is on title for the rental unit address. The Applicant described herself as an "owner in standing".

The Applicant advised that there is no tenancy relationship between the Respondent and D.L. The Applicant said she rented a room to the Respondent and he pays rent to her. The

Applicant testified that she rented the room to the Respondent on her own accord, not on behalf of D.L.

The Respondent agreed he does not have a tenancy relationship with D.L. and that he pays rent to the Applicant. The Respondent denied that the Applicant has a room at the rental unit address. The Respondent said he had signed an agreement October 29, 2018 in relation to the Applicant having a room at the rental unit address but took the position that the parties had not followed through with the agreement.

The definition of "Landlord" set out in the *Act* is as follows:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

- (i) permits occupation of the rental unit under a tenancy agreement, or

- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

...

- (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;

Further, section 4 of the *Act* states:

4 This Act does not apply to

...

- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

The parties disagreed about whether the Applicant maintains a room at the rental unit address. However, the Respondent acknowledged signing an agreement October 29, 2018 in relation to the Applicant maintaining a room at the rental unit. I am satisfied based on this that the Applicant does maintain a room at the rental unit address.

I found the testimony in relation to whether the Applicant is an owner of the rental unit unclear as I found the testimony in relation to the nature of the purchase agreement unclear. I do not have a copy of the purchase agreement available as evidence on this hearing.

However, I do not find it necessary to determine whether the Applicant is an owner of the rental unit address or not as the outcome is the same. If the Applicant is an owner, I am satisfied she maintains a room at the rental unit address and therefore the *Act* does not apply pursuant to section 4(c) of the *Act*. If the Applicant is not an owner of the rental unit address, she does not meet the definition of a landlord set out in section 1 of the *Act*. In either scenario, the *Act* does not apply to these parties. I therefore decline jurisdiction in this matter.

### Conclusion

I find the *Act* does not apply to these parties and therefore decline jurisdiction in this matter.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 27, 2018

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Residential Tenancy Branch