



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPT, OLC, PSF, AAT, LAT, LRE, MNDCT, FFT

### Introduction

On October 25, 2018, the Applicants applied for a Dispute Resolution proceeding seeking an Order of Possession pursuant to Section 54 of the *Residential Tenancy Act* (the “*Act*”), seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*, seeking services or facilities to be provided pursuant to Section 62 of the *Act*, seeking an Order to allow access pursuant to Section 30 of the *Act*, seeking authorization to change the locks pursuant to Section 31 of the *Act*, seeking to suspend or restrict the Landlord’s right to enter pursuant to Section 70 of the *Act*, seeking monetary compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Applicants attended the hearing. As well, B.G. attended the hearing with R.S. and C.M. appearing as agents for the Respondents. All in attendance provided a solemn affirmation.

The Applicants advised that they served a Notice of Hearing package, including their evidence, to the Respondents and R.S. by registered mail and the Respondents confirmed that they received this package. Based on this undisputed testimony and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Respondents were served the Notice of Hearing packages and evidence.

The Respondent advised that she posted her evidence to the Applicants’ door on November 23, 2018 and the Applicants confirmed that they received this evidence. As this evidence complies with the service requirements of Rule 3.15 of the Rules of Procedure, I have accepted and considered this evidence when rendering this decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and I have the discretion to sever and dismiss unrelated claims. As the crux of this hearing pertains to jurisdiction, this decision would primarily address the Applicants' request for an Order of Possession. Their other claims were dismissed and the Applicants are at liberty to apply for these claims under a new and separate Application, should the *Act* apply.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

#### Issue(s) to be Decided

- Are the Applicants entitled to an Order of Possession?
- Are the Applicants entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on February 1, 2018, that the Applicants rent a specific room in the property, that there are multiple other rooms that are rented out, and that all the tenants of the property share communal areas and facilities. Rent was established at \$1,200.00 per month, due on the first of each month and a security deposit of \$600.00 was paid.

The Applicants' position is that they signed a Residential Tenancy Agreement that binds the Applicants and Respondents as Tenants and Landlords under the *Act*. They stated that the Respondents do not live in the house and R.S. moved in months later. They submitted that there is nothing in the tenancy agreement which stipulates that they are just occupants, nor have they been provided any documentation proving that the Respondents were acting as agents for the owners of the property. They advised that after they moved in, the Respondents commenced various renovations throughout the property.

The Applicants referred to letters sent to them by the Respondents' counsel advising them that their tenancy would be ending, that they were occupants not tenants, and that the *Act* did not have jurisdiction with respect to their accommodation. However, the Applicants disagreed with this interpretation as the Respondents do not live in the property, the Respondents note a different residential address on the tenancy agreement, and the Respondents have acknowledged accepting rent from the Applicants.

The Respondents submit that they have a signed tenancy agreement with the owner of the property indicating that they are the tenants that have rented the entire property. Furthermore, they advised that there is nothing documented showing that the Respondents are acting as agents on behalf of the owners; however, they have written permission to rent out the separate rooms of the property to other people as occupants. They advised that their daughter lived in one of the rooms and acted as Assistant Manager of the property. They stated that there is a banner at the front of the property indicating who the owners of the property were, that all of the occupants were advised that the Respondents were not the owners and did not live there, and that the occupants shared all the common areas but rented their own separate rooms. The Respondents submitted into evidence a copy of the tenancy agreement and the additional rules that would ensure the successful functioning of this shared accommodation.

The Respondents' counsel argues that the Respondents do not meet the definition of "landlord" under the *Act* as the property is one house that is rented to them and then licensed out. Furthermore, the Respondents' daughter lives in the property and the Respondents reserve the right to enter the property at any time. As such, this situation is a license to occupy and not a tenancy as defined under the *Act*. Moreover, he advised that the City conducted an inspection of the property and ordered that all of the locks on the interior rooms must be removed so the occupants would no longer have security to the rooms that they rent.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 1 of the *Act* defines a “landlord” as:

**"landlord"**, in relation to a rental unit, includes any of the following:

- (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;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (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;
- (d) a former landlord, when the context requires this;

In addition, I find it important to cite the following paragraph from Policy Guideline # 19 with respect to this scenario:

“Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act.”

In my view, after hearing testimony from both parties, it is clear to me from the outset that the intention of the Respondents was always to occupy and manage the property, and by extension, have their daughter be the assistant manager of the property. This is

corroborated inasmuch by the “Residential Rental Application” with the Applicants that the Respondents submitted as documentary evidence.

Consequently, I do not find that the Respondents meet the definition of “landlord” as contemplated by the *Act* as this is being operated seemingly as a business. Therefore, I am satisfied that there is no landlord/tenant relationship between the parties as the Applicants would be considered occupants with no rights or obligations under the *Act*. I find that even if the parties intended upon entering into a tenancy agreement as contemplated under the *Act*, the *Act* would not apply to this tenancy. Consequently, I have no jurisdiction to render a decision in this matter.

### Conclusion

I decline to hear this matter as I have no jurisdiction to consider this Application.

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 11, 2018

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Residential Tenancy Branch