



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL-4M, LRE, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (“Application”) by the applicant to cancel a Four Month Notice to End Tenancy for Cause (“Four Month Notice”), for an order to suspend or set conditions on the Landlord’s right to enter the rental unit, site or property, and to recover the cost of the filing fee.

The Applicant, the Applicant’s agent (the “Agent”), and the Respondent attended the teleconference hearing and gave affirmed testimony. During the hearing the Applicant and Respondent were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. However, only the evidence relevant to the issues and findings in this matter and consistent with the Residential Tenancy Branch Rules of Procedure are described in this Decision. Neither party raised any concerns about service of the Application, Notice of Hearing, or the documentary evidence before me for consideration.

The Applicant and Respondent confirmed that they are siblings; sister and brother respectively. There is no dispute that the Applicant was living in a duplex owned by her mother, with her mother living in the other side.

The Respondent said he is the Administrator of his mother’s estate, as she died intestate, and that the home will be sold as part of administering the estate.

The Respondent served the Applicant with a Four Month Notice and claims there is a tenancy between the Applicant and their mother (or her estate, as she has passed away).

### Preliminary Procedures and Matters

The Parties dispute whether the Applicant’s residence falls within the jurisdiction of the *Act* or not; the Applicant believes that it does not and the Respondent believes that the

living arrangement is a tenancy under the *Act*. I will analyze the jurisdictional aspect of this Application in this Preliminary section and if appropriate, analyze the merits of the Application thereafter.

The Parties agree that there is no written tenancy agreement for this living arrangement and the Applicant paid no security or pet deposit. The Applicant said in the hearing that rent was never discussed and that she has lived in the duplex for 15 or 16 years. She said she initially moved in on the basis that her mother needed company. The Applicant said that as the years passed, she began doing more and more to help her mother; she said she was living there to help take care of her mother.

The Applicant said she regularly contributed financially to her mother to help her pay taxes and utilities, but that there was no agreement to her having to pay “rent”. The Applicant said she did chores for her mother, including doing a lot of shopping for her and taking her shopping and to lunch. The Applicant said she bought groceries for the mother, since she was more mobile with a vehicle. The Applicant also said she cooked for her mother once a week and that she would share her meals with the mother every day. She said it was not a typical tenancy – “we shared groceries; I could carry more, because I have a car.”

The Respondent disagreed with the Applicant’s characterization of the arrangement, saying that he believed it was a tenancy under the *Act*. He said his sister moved into the rental unit and was paying \$500.00 a month on a regular basis, and that the amount she paid increased to \$800.00. The Parties did not say what prompted the increase.

The Respondent said that the Applicant was “often quite late” with her payment to her mother, so they “arranged for the tenant to pay me and my wife the rent each month to take the burden off of our mother.” The Respondent said he would assist his mother in paying bills from the same account into which the Applicant’s payments would go. He said there “were a number of times she was quite late in paying the rent. She called it ‘rent’.”

The Respondent said that he and the Applicant would argue about the “rent” and that he told the Applicant that the amount she owed was “below market rent” and that she should be happy to pay this amount. He said they had that discussion a few years ago when the rent was \$500.00. He said “the market rate these days would be at least twice that amount – closer to \$1,600.00.” The Respondent stressed that the Applicant referred to the payment as “rent”. The Applicant did not comment on the Respondent’s evidence in this regard.

The Respondent said that after his mother passed away he suggested to the Applicant that she defer paying the rent until he “figured out the rules” he must follow as administrator of the estate. He said: “After I became the administrator, I set up an estate account. I said ‘please back pay those amounts and continue to pay to the estate account.’” The Respondent said that the Applicant told him that she was not going to pay, because she was a beneficiary. He said, “I let it slide a few months and then sent a demand letter to pay the back amount and to continue paying rent.” When the Applicant did not follow his directions in this regard, the Respondent said he served her with a notice of eviction for nonpayment of rent.

The Respondent said that it was his objective to renovate the rental unit to increase the sales value of the property and wind up the estate.

### Analysis

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

#### **What this Act applies to**

**2** (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

Definitions in section 1 of the *Act* include:

**"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;

**"rent"** means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];

**"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 licence to occupy a rental unit;

**"tenant"** includes

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.

Further, Residential Tenancy Branch Policy Guideline 9 includes the following guidance:

This Guideline clarifies the factors that distinguish a tenancy agreement from a license to occupy. The definition of "tenancy agreement" in the Residential Tenancy Act includes a license to occupy.

...

A license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or "licensee", is given permission to use a site or property, but that permission may be revoked at any time. Under a tenancy agreement, the tenant is given exclusive possession of the site for a term, which can include month to month.

...

If there is exclusive possession for a term and rent is paid, there is a presumption

that a tenancy has been created, unless there are circumstances that suggest otherwise.

. . .

Some of the factors that may **weigh against** finding a tenancy are:

- Payment of a security deposit is not required.
- The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.
- The occupier pays property taxes and utilities but not a fixed amount for rent.
- The owner, or other person allowing occupancy, retains the right to enter the site without notice.
- The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.
- The parties have agreed that the occupier may be evicted without a reason, or may vacate without notice.

The arbitrator will weigh all of the factors for and against finding that a tenancy exists, even where the written contract specifies a license or tenancy agreement. It is also important to note that the passage of time alone will not change the nature of the agreement from license or tenancy.

[emphasis added]

I find the following are determinative considerations in the jurisdictional issue before me:

<b>For finding a tenancy under Act</b>	<b>Against finding a tenancy under the Act</b>
Paying \$500.00+ a month on a regular basis.	No written tenancy agreement.
Regular amount payable increased.	No security deposit.
Respondent said Applicant called the payment “rent”.	Did chores for her mother (owner/“landlord”).
	Cooked for her mother (owner/“landlord”).
	Payment increase greater than <i>Act</i> allows.
	Despite rent increase, still below market rate (more consistent with paying property taxes).
	Often “quite late” with “rent”.
	A family, not a business relationship.

Furthermore, section 13(1) of the *Act* requires that a landlord must prepare in writing

every tenancy agreement entered into on or after January 1, 2004.

An additional consideration is that the Parties advised that the Respondent is a beneficiary of the estate, so she has an ownership interest in the property.

Based on the evidence before me overall, I find there is insufficient evidence to support that a tenancy agreement exists between the Applicant and the Respondent. I find that the *Act* does not apply to the living arrangement described by the Applicant and the Respondent.

Based on the above, I decline this Application due to lack of jurisdiction under the *Act*.

### Conclusion

I decline to hear the Applicant's Application due to a lack of jurisdiction under the *Act*.

There is insufficient evidence before me to support that the named Parties have a landlord and tenant relationship under the *Act*. I find the *Act* does not apply to the living arrangement described at the hearing.

I do not grant the filing fee, since the *Act* does not apply.

This decision will be emailed to the email addresses confirmed by the Applicant and Respondent during the hearing.

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: February 27, 2019

---

Residential Tenancy Branch