



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      **OPT FFT**

### **Introduction**

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an Order of Possession of the rental unit pursuant to section 54; and
- authorization to recover the filing fee for this application from the respondents pursuant to section 72.

Tenant CE attended the hearing on his own behalf and on behalf of tenant JM and MEM (the "**Applicants**"). CE was assisted by his father ("**RE**"). Both respondent landlords (the "**Respondents**") attended the hearing. Two additional owners of the property on which the unit formerly occupied by the tenants is located (the "**Property**") attended the hearing as well on behalf of the Respondents. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions.

### **Preliminary Issue - Jurisdiction**

In their written submissions, the Respondents wrote that they did not believe a tenancy agreement existed between them and the Applicants. They testified that no signed agreement existed between them, the Applicants paid no rent, no security deposit, and no portion of the utilities.

The Respondents testified that they purchased the Property (on which a single detached home and a cottage are located) from CE's father. At the time of purchase, the Applicants were living in the cottage. The Respondents testified that they told RE that the Applicants could remain in the cottage for one month after the sale of the Property.

CE testified that the Applicants paid no rent to RE when RE owned the Property and the Applicants lived in the cottage. CE agreed that the Applicants paid no rent, security deposit or utilities to the Respondents. CE testified that RE and the realtor (who is the brother of Respondent DA and uncle of Respondent NA) had a verbal agreement that the Applicants could stay in the cottage rent-free for *two* months after the sale of the Property, so long as he allowed the Respondents access to the cottage to make renovations.

The Respondents denied having any knowledge of any agreement made between the realtor and RE.

RE testified that the Respondents would have known about the verbal agreement that he and the realtor made, and that the realtor agreed to this as “a favour” to him. RE testified that the need for this agreement was so that the Applicants would have somewhere to stay while RE located alternate accommodations for them by ending the tenancy of tenants who live at another property he owns therefore allowing the Applicants to move in.

Section 2 of the Act states:

**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.

Section 1 of the Act defines 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;

In the case at hand, all parties agreed that any arrangement which allowed the Applicants to stay in the cottage was made between RE and the Respondents (or the realtor) as part of the larger transaction for the sale of the house. The Applicants had no hand in this arrangement and no party argued that there was an independent agreement between the Applicants and the Respondents which would allow the Applicants to reside in the cottage.

As such, I find that no tenancy agreement exists, as a tenancy agreement must be between a landlord and a tenant. DE did not occupy the cottage he is not therefore a tenant.

As such, that I therefore have no jurisdiction to hear this dispute. Accordingly, I dismiss the Applicants' application, without leave to reapply.

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 19, 2019

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Residential Tenancy Branch