



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

FFL OPR-DR

### Introduction

This hearing, reconvened from a Direct Request proceeding, dealt with an application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- An order of possession pursuant to section 55; and
- Authorization to recover the filing fee from the respondent pursuant to section 72.

The respondent did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The applicant was represented by their counsel who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The applicant submits that they served the respondent with the 10 Day Notice to End Tenancy for Unpaid Rent, the notice of Direct Request proceeding and Notice of Hearing and evidence by registered mail. The applicant testified that the addresses where the respondent was served was provided by the respondent. The applicant provided valid Canada Post tracking numbers as evidence of service. Based on the evidence I find that the respondent was served with all materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Does this matter fall within the jurisdiction of the Branch?

### Background and Evidence

The respondent is the mother of the applicant. The rental property is a detached home with a main floor unit and basement suite. The respondent was the occupant and registered owner of the property until 2016 when the property was transferred from the respondent to the applicant. The respondent occupied the rental property both before the transfer of ownership and afterwards until recently when they continued to occupy the property until they vacated for medical reasons.

The parties signed a written tenancy agreement dated July 11, 2016 which provides that monthly rent is \$100.00. No security deposit was collected. The parties registered the tenancy agreement on title for the property.

No rent was ever collected during the duration of the occupancy. The applicant first issued a 10 Day Notice dated October 8, 2019 indicating an arrear of \$100.00 that was due on July 1, 2016. The 10 Day Notice also contains a hand-written note stating, "and each month thereafter until the time of the abandonment or present".

The applicant gave lengthy submissions on issues including the history of conflicts between the parties and other family members, health concerns about the respondent, conjecture about who might be financing the health care costs for the respondent, characterizing the absent respondent as an unreliable witness and surmising that the respondent's actions are influenced by other family members. The applicant was unable to explain why no rent had been collected for the duration of the occupancy.

### Analysis

The Residential Tenancy Act defines a tenancy agreement as:

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 and did not pay a security deposit. While there is a written tenancy agreement signed by the parties I find little evidence that either party intended the terms of the agreement to be binding. Furthermore, the applicant submits that the copy of the agreement they have submitted into evidence was altered without their knowledge or consent at some unknown point in

time. The applicant allowed the respondent to reside in the property for years without collecting any rent or objecting to non-payment until the present 10 Day Notice was issued over 3 years later.

The Respondent has never paid money for the occupancy, nor does it appear that any consideration of value has been provided for this occupancy. The parties submit that the written tenancy agreement was registered as a charge on title in order to secure the respondent's living arrangement. Based on the totality of the evidence, I find that the relationship between the parties does not have the elements of a tenancy. I find that the written tenancy agreement does not create obligations on the part of the parties but is more in the nature of confirming that the respondent has an interest in the property.

I find that there is insufficient evidence that a tenancy agreement exists between the parties. The respondent is not obligated to pay any rent or consideration for occupying the building. No landlord tenant relationship exists between the parties that would give rise to obligations on either part under the *Act*.

Consequently, as I find there is no tenancy in place I find I have no jurisdiction to consider the present application.

### Conclusion

I find that I do not have jurisdiction in this matter and I dismiss the application for dispute resolution 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 27, 2019

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Residential Tenancy Branch