



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC

### Introduction

This hearing dealt with the Applicants' Application for Dispute Resolution, made on November 19, 2019 (the "Application"). The Applicants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- An order that the Respondent comply with the Act, tenancy agreement, or regulations.

The Applicant, the Applicant's Translator, H.S., and the Respondent attended the hearing at the appointed date and time and provided affirmed testimony.

At the start of the hearing, the issue regarding whether or not the Act applies to this tenancy situation was discussed. The Respondent stated that she is not the owner of the home and that she is a tenant of the home owner. The Respondent stated that she has one tenancy agreement with the home owner which does not include the Applicants. The Respondent stated that she has a separate agreement with the Applicants.

### Preliminary Matters - Jurisdiction

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;*

According to the Residential Tenancy Policy Guideline 13 (the “Policy Guideline”):

*Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.*

According to the Policy Guideline 19;

*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. If there is no landlord/tenant relationship, the Act does not apply.*

In light of the above, I find that the Respondent does not meet the definition of a Landlord because she is not the owner of the rental unit, or an Agent who on behalf of the owner permits occupation of the rental unit under a tenancy agreement. According to the definition, a Landlord must be a person other than a Tenant occupying the rental unit.

I further find that the Applicants are not a Tenants with full rights under the *Act* because they did not enter into a tenancy agreement with the owner of the rental property. They are occupants of the Respondent with no rights or responsibilities under the *Act*.

I find that the *Act* does not apply to the living arrangement and therefore I have no jurisdiction to hear the dispute. The Application for Dispute Resolution is dismissed without leave to reapply.

Conclusion

I decline to proceed due to a lack of jurisdiction, and the Application is dismissed without leave to reapply. The Applicants should seek legal advice from their lawyer as to how to resolve this dispute.

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: January 10, 2020

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Residential Tenancy Branch