



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC

### **Introduction**

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the “**Act**”) for an Order of Possession for a breach of a material term of the tenancy pursuant to section 55 of the Act.

GO did not attend this hearing, although I left the teleconference hearing connection open until 9:47 am in order to enable GO to call into this teleconference hearing scheduled for 9:30 am. The applicant was represented by two agents at the hearing (“**CM**” and “**JW**”). Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that CM, KW, and I were the only ones who had called into this teleconference.

JW testified that GO was served the notice of dispute resolution form and supporting evidence package via registered mails on December 23, 2019 and February 6, 2020. JW provided two Canada Post tracking number confirming these mailing which are reproduced on the cover of this decision. I find that GO is deemed served with these packages on December 28, 2019 and February 11, 2020, five days after JW mailed them, in accordance with sections 88, 89, and 90 of the Act.

### **Preliminary Issue – Jurisdiction**

On its application for dispute resolution, the applicant wrote:

Our client, [**MS**] has 99% interest on title & [**TS**] has 1%. [TS] is not our client. [TS] collected rent from [the respondent (**GO**)] for a month or two & stopped. [TS] no longer lives in the home & [GO] continues to live in the upper suite. He removed the door between the upper suite & main floor, accessed the main floor without authorization & made renovations not authorized by the [applicant]. He changed locks, broke locks, denied access. He did not comply with the eviction notice.

CM testified that MS is TS's mother. She testified that MS moved out of the property in question (the **"Property"**) roughly 10 years ago but that TS remained in the Property. She testified that TS rented out the upper floor of the Property to GO in 2017. At first, GO paid some amount of monthly rent to TS (CM could not say how much), but the stopped after a few months. CM testified that GO stopped at TS's request because the receipt of rent negatively affected TS's ability to receive disability benefits. CM testified that TS kept the rental payments from GO for herself and did not provide them to MS or use them to pay common expenses (such as the mortgage).

In June 2019, TS moved out of the Property and into an assisted living facility. GO remained at the Property. CM testified that GO removed the door between the main floor of the Property (where TS lived) and the upper floor (where GO lived). GO began renovations of the main floor (CM submitted pictures into evidence). The applicant issued a one month notice to end tenancy (the **"Notice"**) on this basis.

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 sets out the following definitions:

**"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;

[...]

- (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;

Based on the CM's testimony, I find that MS is an owner of the Property. However, I do not find that, at any point in time, she has permitted GO to reside on the Property. It was TS who permitted GO to reside on the Property. Additionally, I have no evidence before me of MS performing any duties under the Act, a tenancy agreement, or a service agreement; indeed, it appears that MS left the administration of the Property entirely to TS up until TS moved out. As such, MS does not fit in the definition "(a)" of "landlord" at section 1 of the Act.

I find that MS is entitled to possession of the Property, an owner of it, however, I have no evidence of MS exercising any rights of a landlord under a tenancy agreement or the Act. As such, MS does not fit in the definition "(c)" of "landlord" at section 1 of the Act.

In any event, even if I found that MS met the definition of a "landlord" under section 1 of the Act, MS would still need to prove that a tenancy agreement exists between GO and TS. Section 1 of the Act defines "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;

A requirement of any agreement or contract is that there is an exchange of consideration between the parties.

In *The Law of Contract*, 3<sup>rd</sup> Ed. (Scarborough: Carswell, 1994) at 81, GHL Fridman writes:

The common law distinguishes between gratuitous promises and those which can be the basis of a contractual obligation. What gives the latter their legal character is what is called "consideration:". The essence of a valid, binding contract is the idea of a "bargain" between the parties. A contract consists of an exchange of promises, acts, or acts and promises, as a result of which each side receives something from the other.

In this case, while GO did pay TS some amount of money per month when he first moved into the Property, I find that he stopped doing so at least two years ago, at the request of TS. No evidence was provided to me to suggest that GO provided any other form of consideration to TS in exchange for being allowed to remain in the Property. As such, I find that no tenancy agreement exists between GO and TS (or MS).

As the applicant has failed to persuade me that a tenancy agreement (either oral or written) exists, and as MS is not a “landlord” as defined by the Act, I do not have jurisdiction over this matter. The applicant must turn to another forum to obtain the relief sought.

Accordingly, I dismiss the 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: February 28, 2020

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Residential Tenancy Branch