



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Applicant on January 29, 2020 (the “Application”). The Applicant applied for an order of possession for the rental unit.

The Applicant and Respondents appeared at the hearing. I explained the hearing process to the parties and answered their questions in this regard. The parties provided affirmed testimony.

The Applicant submitted evidence prior to the hearing. The Respondents did not. I addressed service of the hearing package and Applicant’s evidence. Respondent B.B. confirmed receipt of the hearing package and Shelter Information form. The Respondents had not received the text messages. The Applicant advised she did not serve the text messages on the Respondents. I heard the parties on whether the text messages should be admitted or excluded. The Applicant submitted that the text messages should be admitted because they validate everything. The Respondents submitted that the text messages should be excluded because they have not seen them and cannot respond to them.

The Applicant was required to serve all evidence she intended to rely on at the hearing on the Respondents pursuant to the Rules of Procedure (the “Rules”). The Applicant did not do so. I exclude the text messages as I find it would be prejudicial to admit them when the Respondents have not seen them and cannot comment on them.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties and the Shelter Information form. I have only referred to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Applicant entitled to an Order of Possession for the rental unit?

Background and Evidence

The Respondents are the parents of the Applicant. The Respondents own the rental unit address which is a house.

The Applicant testified as follows.

The rental unit address has an upper and lower suite. The Respondents live in the upper suite. She lived in the lower suite. She had her own bathroom, kitchen and entrance.

There was no written tenancy agreement between the parties. Her and Respondent B.B. completed the Shelter Information form together. There was an agreement between the parties that she would move into the lower suite and she did so October 15, 2019. The Respondents were helping her out. Respondent B.B. said she had to pay \$700.00 per month in rent and that she could pay it when she received her cheque from the Ministry. The agreement was not for a specific term, she was going to stay until she found somewhere else. She had her boyfriend staying with her. The Ministry issued a cheque to Respondent B.B. for \$350.00 for the security deposit. She paid the Respondents rent for November, December and January.

In relation to rent, the \$700.00 from the Ministry would come to the Applicant. Respondent B.B. would cash the cheques because the Applicant does not have a bank account. She received \$760.00 in total and Respondent B.B. would give the Applicant \$40.00 or \$60.00 back.

At the end of December, Respondent B.B. called the police on the Applicant. Respondent B.B. and the Applicant's uncle told the Applicant to get out. The police told Respondent B.B. to contact the RTB and stay out of the lower suite. The parties were not getting along. Respondent B.B. locked the Applicant out of the main entrance to the rental unit address as well as the lower suite entrance. The Applicant did not have a key. Respondent B.B. locked the Applicant out as of January 06, 2020. The tenancy did not end in accordance with the *Residential Tenancy Act* (the "Act").

Some of her belongings are still in the lower suite including her bed and television. The Applicant did remove some of her clothes from the lower suite.

Respondent B.B. testified as follows.

There was no tenancy agreement between the parties. The Applicant came into the Respondents' home mid October because she had been thrown out of another place. The Applicant was moving within a few days, but her new place was not ready. The Respondents agreed to let her stay with them. The Applicant was only supposed to stay for a few days. There is no separate lower suite at the rental unit address. There is no bathroom or kitchen in the basement of the rental unit address. There is no separate entrance to the basement.

In relation to the Shelter Information form, Respondent B.B. was cashing cheques for the Applicant but that was before the Applicant moved into the rental unit address. Respondent B.B. signed the Shelter Information form but the Applicant was not a tenant.

I understood Respondent B.B. to say she signed the Shelter Information form because it was the only way to get \$740.00 back that was owed. The parties did talk about the Applicant paying rent starting in January if she did not find a place. The parties did not agree on a rent amount. The parties did not discuss a security deposit. The Respondents did not collect a security deposit. The Applicant did not pay the Respondents rent. The Applicant does not have furniture in the basement. Most of the Applicant's belongings are gone from the basement.

The police told the Respondents to give the Applicant written notice to vacate. The Respondents did provide the Applicant a notice that they typed up telling her to vacate by January 12, 2020. The Applicant did leave by January 06, 2020. The Applicant never had a key to the rental unit address.

Respondent T.R. testified as follows.

The Applicant grew up in the rental unit address. The Applicant had been kicked out of her apartment and came back home. The Applicant was only supposed to stay a couple of days. The Applicant did not pay rent. There is no lower suite in the rental unit address. The basement does not have a bathroom, kitchen or entrance. The Applicant and her boyfriend used the bathroom and kitchen upstairs when they were at the rental unit address.

In reply, the Applicant testified as follows. The Respondents gave her written notice thus acknowledging a tenancy. She had a key to the rental unit address, but the Respondents changed the locks.

### Analysis

Section 54 of the *Act* states:

54 (1) A tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution.

(2) The director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.

(3) The date specified under subsection (2) may not be earlier than the date the tenant is entitled to occupy the rental unit.

Pursuant to rule 6.6 of the Rules, it is the Applicant who has the onus to prove she is entitled to an order of possession for the rental unit.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I am not satisfied there was a tenancy agreement between the parties for the following reasons.

There was no written tenancy agreement entered into between the parties.

The Respondents are the Applicant's parents. It would not be unusual for the Respondents to allow the Applicant to stay at the rental unit address in the absence of a tenancy agreement or rent payments.

The Applicant acknowledged that the Respondents, as her parents, were helping her out when they allowed her to stay at the rental unit address. The Applicant acknowledged that the parties did not discuss a specific term for the tenancy and that

she was going to stay until she found somewhere else. These two points support the Respondents' position in this matter.

At first, the Applicant testified that she did not have a key to the rental unit address. The Applicant changed this testimony during her reply. I am not satisfied the Applicant did have a key to the rental unit address. The change in testimony calls into question the credibility of the Applicant on this point. Respondent B.B. testified that the Applicant did not have a key. This supports that there was no tenancy agreement between the parties as one would expect the Applicant to have a key if there was a separate suite that she was paying rent for at the rental unit address.

The only admissible evidence the Applicant submitted to support her position about a tenancy agreement in this matter is the Shelter Information form. I acknowledge that the Shelter Information form does tend to support the Applicant's position. However, the Shelter Information form is not a tenancy agreement, as stated at the top of the form. Further, the Shelter Information form does not show that a security deposit or rent was actually paid to the Respondents.

The Applicant did not provide further evidence showing a security deposit was paid to the Respondents. The Applicant did not provide further evidence showing rent was paid to the Respondents. The Applicant did not call her boyfriend, who she said was staying with her, as a witness. The Applicant did not submit a copy of the written notice about vacating issued to her by the Respondents. The Applicant said during the hearing that she had photos of the lower suite, yet these were not submitted.

Both Respondent B.B. and T.R. appeared at the hearing and gave affirmed testimony about the circumstances. I have some concerns about the credibility of Respondent B.B. given she signed the Shelter Information form which tends to contradict the position she is now taking. However, I do not have concerns about the reliability or credibility of Respondent T.R. Respondent T.R. did not contradict himself or change his testimony during the hearing. He did not provide testimony that failed to accord with common sense. His testimony supports that there was no tenancy agreement between the parties.

It is the Applicant who has the onus to prove she is entitled to an order of possession under section 54 of the *Act*. It is the Applicant who has the onus to prove there was a tenancy agreement between the parties. Given the above noted issues, and primarily because of the lack of compelling evidence to support the Applicant's position, the Applicant has failed to prove on a balance of probabilities that there was a tenancy

agreement between the parties. In the absence of a finding that there was a tenancy agreement between the parties, the *Act* does not apply, the RTB does not have jurisdiction over this matter and the Applicant is not entitled to an order of possession under section 54 of the *Act*.

The Application is dismissed without leave to re-apply.

### Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 28, 2020

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Residential Tenancy Branch