



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

The Applicant filed the Application for Dispute Resolution under the *Residential Tenancy Act* (the “*Act*”) for an Order of Possession for the rental unit, and to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to section 74(2) on April 27, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The Applicant attended the telephone conference call hearing; the Respondent did not attend.

The Applicant submitted that they sent the Notice of Dispute Resolution and prepared evidence to the Respondent who resides in the adjacent unit. They stated the Respondent acknowledged receipt of the same and responded to this via text message upon delivery on March 10, 2020. From this evidence I am satisfied the Respondent was served notice of this hearing and the application in a manner complying with section 89(1)(c) of the *Act*, and the hearing proceeded in the Respondent’s absence.

### Preliminary Issue - Jurisdiction

The Notice of Dispute Resolution lists the Respondent as the tenant in this matter. The Applicant described that the Respondent lives in the adjacent duplex unit with their mother. The Applicant and Respondent are siblings. There is no tenancy agreement, and the Respondent does not pay rent, living in the unit for the last “5 or 6 years”.

The Applicant also stated the Respondent lives in the unit with their mother, sharing the bathroom and kitchen with their mother. The mother is the owner of the duplex.

The Applicant stated the police advised them to proceed by way of dispute resolution at the Residential Tenancy Branch, in order to secure an eviction by way of an order of possession.

The *Act* sets out what it applies to in section 2. This is “tenancy agreements, rental units and other residential property.”

The *Act* also sets out, in section 4, what it does *not* apply to. In subsection (c), this is: “living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.”

Further, the *Act* section 1 contains definitions as follows:

“**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.

“**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 license to occupy a rental unit.

I find from the testimony of the Applicant that the situation they presented is not that of a residential tenancy. There is no tenancy agreement between the parties, no payment of rent, and the Respondent shares bathroom and kitchen with the owner who is their mother. Further, the sibling Applicant in the adjacent duplex unit is not a landlord by definition, with no rights, powers, or obligations under the *Act*.

I find the Respondent here is not a tenant of the Applicant; rather, they are a family member living in the same unit with the unit owner who is a parent.

Based on these facts, and an application of the legislation, I do not have jurisdiction to hear this Application.

Conclusion

Having declined jurisdiction to hear this matter, I dismiss this Application for Dispute Resolution in its entirety, without leave to reapply. With this dismissal, the Applicant is not entitled to recovery of the filing fee.

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: April 28, 2020

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Residential Tenancy Branch