



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, LAT, LRE, FFT

### Introduction

The Applicant filed the Application for Dispute Resolution under the *Residential Tenancy Act* (the “*Act*”) for an order that the Respondents comply with the provisions of the *Act*, an order authorizing them to change locks; and order suspending or restricting the Respondents’ right to enter the unit; and a monetary order for recovery of the filing fee. The matter proceeded by way of a hearing pursuant to section 74(2) on May 21, 2020. In the conference call hearing I explained the process and provided the parties the opportunity to ask questions.

The Respondents confirmed receipt of the Notice of Dispute Resolution, delivered via email on April 24, 2020. The Applicants provided a copy of the email from the Respondents accepting service of the notice and the prepared evidence. In the hearing the Applicants confirmed receipt of the Respondent’s documents they present here.

Each party was represented by legal counsel at the hearing.

### Preliminary Issue - Jurisdiction

The Notice of Dispute Resolution shows the Applicant as the ‘tenant’, and the Respondent as the ‘landlord’ in this matter. The Applicant’s legal counsel explained that there is a tenancy agreement in place that is an *oral* or *implied* agreement as per the *Act*.

The Applicant lives in the basement suite of a house that belonged to their mother, prior to the sale and transfer of ownership to new owners on April 15, 2020. In the living arrangement, the Applicant gave care and emotional support, medical assistance, and financial administration. This was the “provision of care services” allowing the Applicant to maintain “possession of the basement suite”. With reference to the definition in the *Act*, the Applicant adds that “Payment of cash is not a requirement for a tenancy agreement.”

Additionally, they stated that the Applicant continues to prepare meals within the basement of the home using installed kitchen facilities. Additionally, they use a separate bathroom and separate entrance to the basement.

In essence the Applicant submits the *Act* applies to this living arrangement, and the 'landlord' thus needs to comply with the *Act* and regulations.

The Respondents, via legal counsel, submit this is an "arrangement" between the Applicant and their mother who was the owner of the home. This is not a self-contained suite in the basement, and there is neither a formal tenancy agreement in place, nor the provision of rent. They referred to section 4(c) of the *Act* to state this is an arrangement in which the occupant shares the bathroom or kitchen with the owner, and here the Applicant had done so for the last 20 years. Three of the Applicant's family members, as witnesses, spoke to the living arrangement in place and the structure of the home itself.

In the alternative, the Respondents submit that with transfer of title three months ago, the right to occupy was terminated.

The *Act* sets out what it applies to in section 2: "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.

From weighing the evidence and considering the submissions of both parties, I find the situation is not that of a residential tenancy.

My interpretation of the situation is that there is a provision of care – even loosely equating to the *Act* definition of “rent” with its delineation of “value” – in exchange for the right to possess living accommodation. I weigh this against the *Act* being plain in stating that it does not apply to an arrangement where the occupant shares a bathroom or kitchen with the owner.

I find the evidence of the witnesses in this hearing, as well as the photos they presented outweighs that of the Applicant, who stated they rarely went upstairs to use the kitchen. Moreover, I find there is no proven evidence that there is a separate entrance to the downstairs suite, thereby separating it from the upstairs area normally occupied by the Applicant’s mother.

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: June 4, 2020

---

Residential Tenancy Branch