



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPT, FFT

### Introduction

The Applicant filed on September 7, 2020 for an expedited dispute resolution process. They seek an order of possession for the rental unit, and recovery of the application filing fee. The Director of the Residential Tenancy Branch has established the expedited hearing process in circumstances that include when an individual has been denied access to their rental unit.

Both parties attended the scheduled conference call hearing. The Applicant attended with an advocate who provided submissions and supplemented their oral testimony. At the outset of the hearing, I explained the process and both parties had the opportunity to ask questions on the process.

The Applicant stated they delivered notice of this hearing via registered mail. This included their documentary evidence prepared in advance. They provided a 'Proof of Service' document that shows they sent the items on September 10, and Canada post tracking information confirms this. This is the same day the notice for this hearing was generated at the branch.

### Preliminary Matter – exchange of evidence

At the start of the hearing, the Applicant's advocate stated they received the prepared documentary evidence of the Respondent on October 13. This hearing was on October 16, 2020. They submitted that the evidence should not receive consideration in this hearing where it was not submitted to the Applicant in a timely fashion.

I refer to the Residential Tenancy Branch Rules of Procedure. Rule 10 sets boundaries for expedited hearings and states that the "time limit in this rule applies to the expedited

hearing.” Rule 10.5 specifies that the respondent has a time limit, where their evidence shall be served “as soon as possible and at least two days before the hearing.”

The Applicant’s advocate stated they received the Respondent’s prepared material three days prior to the hearing. I apply Rule 10.5 here for this process, and herein give the Respondent’s prepared evidence full consideration.

#### Preliminary Matter – Jurisdiction

The Applicant presented a copy of a tenancy agreement. This agreement shows the Respondent in this hearing as the landlord, and the Applicant in this hearing as the tenant. The parties signed this agreement on October 19, 2018 for a term that started on October 31, 2018. After a fixed term of one year, the agreement would continue on a month-to-month basis.

The agreement shows a rent amount of \$900, payable on the 1<sup>st</sup> of each month. The agreement also shows the Applicant paid a security deposit amount of \$450 on November 1, 2018.

The Applicant presented that this tenancy agreement was the paper that a B.C. government ministry gave them to sign. This was necessary for their entitlement to social development benefits. The Applicant’s advocate presented that when the Applicant moved in, the Respondent here was acting as an agent of the landlord.

At the start of the hearing the Respondent submitted they are not the “landlord” here; they are merely another tenant. Addressing this agreement as it appears in the evidence, the Respondent stated that the Applicant moved in in 2018, right before they jointly created the tenancy agreement. Initially the Applicant moved in as an occupant and then insisted on the creation of an agreement. In sum, the Respondent provided this was “shared accommodation and shared rent”, with the Applicant providing half the monthly rent amount.

The Respondent provided their own written statement, a statement from the owner of the property with proof of ownership, and a letter from a neighbour identifying the Respondent as a tenant.

Based on the evidence provided, and the testimony of the parties I find there was no tenancy agreement in place. The relationship between the parties is not that of landlord and tenant. Therefore, the Applicant here does not have sole and exclusive possession of the rental unit. This finding is based on my assessment of the evidence on a balance of probabilities.

The reasons for this finding are as follows:

- Primarily, the Applicant provided that the agreement was written for the purposes of obtaining social benefits. This is on a form which is a necessary piece in that application process, provided by a government ministry. I find that important elements of a contract between the parties are not present here: there was no legitimate offer, with acceptance. Most importantly, based on the parties' statements on why such a document exists in this situation, I find the *intention* to create a legal relationship was not present. The document was not created for the purpose of creating a tenancy; rather, it was to complete a necessary step for the Applicant to obtain social benefits.
- The Applicant and the Respondent share the monthly rent amount. I find the Respondent's evidence more convincing on this point. This is in line with the Applicant and Respondent sharing the kitchen, bathroom, living room, and bedroom in the unit. The Respondent provided a signed statement and provided the same testimony in the hearing to make this submission clear. The Applicant has not provided sufficient evidence to establish otherwise.
- The Respondent's parent provided a statement to show the Respondent pays rent within the rental unit. The parent is the owner of the rental unit and in their individual statement they stated they were I find this verifies the Respondent's submission on this point. The Respondent also provided in the hearing that the owner/landlord here never requested to have an agreement with the Respondent or the Applicant.
- I find the Respondent's statement credible on the ending of the living arrangement. They stated: "I did not evict him". I find this is in line with there being no tenancy agreement in place and therefore no end-of-tenancy process with an order of possession from the landlord.

I find the Applicant here is not a tenant of the Respondent. The *Act* section 1 defines "tenancy" as "a tenant's right to possession of a rental unit under a tenancy agreement."

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

Conclusion

Having declined jurisdiction to hearing 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: October 22, 2020

---

Residential Tenancy Branch