



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC-MT, OLC, FFT

### Introduction

On November 5, 2020, the Applicant/Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a Notice to End Tenancy, to order the Landlord to comply with the Act and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Respondent/Landlord attended the conference call hearing; however, the Tenant did not attend at any time during the 40-minute hearing. The Tenant was emailed a copy of the Notice of a Dispute Resolution Hearing by the Residential Tenancy Branch on November 10, 2020; however, did not attend the teleconference hearing set for today at 11:00 a.m.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenant did not call into the conference, I dismiss the Tenant’s Application without leave to reapply as the Tenant failed to attend the hearing to present the merits of their Application.

Section 55 of the Act requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a Notice to End Tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a Notice to End Tenancy that is compliant with the Act.

This hearing was conducted in the Tenant's absence and both the issue of jurisdiction and the issuance of an Order of Possession was considered along with the testimony and evidence as presented by the Respondent/Landlord.

### Issues to be Decided

Does the Residential Tenancy Branch have jurisdiction over this matter?

As I have dismissed the Tenant's Application, should the Landlord be issued an Order of Possession for the rental unit, pursuant to section 55 of the Act?

### Background and Evidence

The Respondent/Landlord stated that she had contacted the Residential Tenancy Branch several times in an attempt to clarify whether the Tenant in this matter would be considered a tenant under the Act or as an occupant. The Respondent/Landlord reported that she had received information that the living arrangement would most likely not fall under the Residential Tenancy Branch's jurisdiction. The Landlord requested clarification during this hearing.

The Respondent/Landlord testified that the residential property is a single-family dwelling and that she had previously entered into a tenancy agreement with a property management company to rent the entire property.

The Respondent/Landlord stated that she signed a Tenancy Agreement with the Tenant in or around September 2018 and established an agreement for the Tenant to move into the residential property and to pay a monthly rent of \$1,400.00, which was due on the first of each month. The Respondent/Landlord stated that she collected a \$700.00 security deposit and a \$700.00 pet damage deposit from the Tenant.

The Respondent/Landlord explained that the Tenant has exclusive possession of her own kitchen, bathroom and bedroom within the residential property and that the only areas that the Respondent/Landlord and the Tenant share are the laundry room, storage and yard.

The Respondent/Landlord submitted a letter she wrote to the Tenant, dated September 29, 2020. The Respondent/Landlord advised the Tenant that the "...letter serves as written notice to end your month-to-month tenancy at the address listed above. The last

day of your tenancy will be December 1, 2020. According to section 38 of the RTA, your security deposit and/or pet damage deposit of \$1400.00 is to be returned.”

The Respondent/Landlord has requested a decision on jurisdiction for the Residential Tenancy Branch and whether the tenancy can end based on the notice to end tenancy letter, dated September 29, 2020.

### Analysis

*Residential Tenancy Policy Guideline #9 – Tenancy Agreements and Licences to Occupy clarifies the factors that distinguish a tenancy agreement from a licence to occupy.*

*Under a tenancy agreement, the tenant has exclusive possession of the rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if the tenant gains exclusive possession of the rental unit or site, subject to the landlord’s right to access the site, for a term; and, the tenant pays a fixed amount for rent.*

I accept the undisputed testimony of the Respondent/Landlord, that she entered into a Tenancy Agreement with a property management company to rent the entire residential property.

When considering whether there was a separate unit within the residential property, I note that the Respondent/Landlord stated the Tenant has exclusive possession of an area within the residential property which includes a separate kitchen, bathroom and bedroom, and that the only areas they share are the laundry room, storage and the yard. As such, I find that the Tenant has exclusive possession of a rental unit within the residential property.

I accept the testimony of the Respondent/Landlord that the month-to-month tenancy was established in September 2018 and since that time, the Tenant has been paying monthly rent of \$1,400.00. The Respondent/Landlord also testified that she collected a security deposit and pet damage deposit from the Tenant.

Based on the Respondent/Landlord’s testimony, I find that the Respondent/Landlord established a written agreement with the Tenant to rent a portion of the residential property to the Tenant for a fixed amount of rent, on a monthly basis.

Based on the evidence before me and the above findings, I find that the Respondent/Landlord (referred to as “Landlord” for the rest of this Decision) has established a tenancy with the Tenant; a tenancy which falls under the jurisdiction of the *Residential Tenancy Act*.

As this tenancy is one that falls under the jurisdiction of the *Residential Tenancy Act*, the Landlord, if pursuing the end of the tenancy, must do so pursuant to the Act.

The Landlord described a letter, dated September 29, 2020, where she attempted to end the tenancy by notifying the Tenant of a move-out date. As I have dismissed the Tenant’s Application to cancel the Notice to End Tenancy, I must consider whether the letter, dated September 29, 2020 is a Notice to End Tenancy that complies with section 52 of the Act.

Section 52 of the Act requires that any Notice to End Tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date, state the grounds for ending the tenancy; and be in the approved form.

I find the Notice to End Tenancy, issued by the Landlord on September 29, 2020 does not comply with the requirements set out in Section 52. Specifically, the letter does not state the grounds for ending the tenancy and is not in the approved form. As such, I decline to issue an Order of Possession for the rental unit to the Landlord.

### Conclusion

This tenancy falls under the jurisdiction of the *Residential Tenancy Act*.

The Tenant’s Application for Dispute Resolution is dismissed without leave to reapply.

I decline the issuance of an Order of Possession in relation to the Notice to End Tenancy, dated September 29, 2020.

This tenancy will continue until ended in accordance with the Act.

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: January 26, 2021

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Residential Tenancy Branch