



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, FF

### Introduction, Preliminary and Procedural Matters-

This hearing dealt with the applicant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order requiring the landlord to comply with the Act, regulation, or tenancy agreement; and
- recovery of the filing fee.

The applicant and the respondent attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

Due to the evidence submissions of the parties, I informed the parties that I would consider whether I had jurisdiction to decide this dispute. The hearing began with a discussion of jurisdiction.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Does this dispute fall under the jurisdiction of the *Residential Tenancy Act* so that I have authority to resolve this dispute?
2. If so, is the applicant entitled to an order requiring the landlord to comply with the Act, regulations, or tenancy agreement?

Background and Evidence

**The applicant stated the following:**

- The property in question is a family home, now owned by a company owned by the respondent. The respondent is the applicant's sister, and she took title to the property in question previously.
- The property in question is the applicant's childhood home and he lived in a home called a "footprint", continuously until 5 years ago.
- The applicant has lived in another primary residence for the last 5 years.
- While the applicant lived at the property in question, he took care of their mother who lived on the property, took her to family gatherings, performed services, and allowed her to spend time with and love his daughters.
- The applicant has never made a monthly rent payment for his residence on the property in question.
- The applicant did not pay a security deposit on this residence.
- There is no written tenancy agreement.

**In a written submission, the respondent provided the following:**

- The respondent received ownership of the property in question in 2001 from her mother.
- There has never been an understanding between the respondent or her company and the applicant that would constitute a tenancy agreement;
- There has never been any understanding between the applicant and the respondent or her company that the applicant had been permitted to occupy the property.
- The applicant has never paid rent.

**The applicant's mother submitted a written statement, which included the following:**

- The parties' mother was the sole owner of the property from 1981 until 2001.
- The applicant moved back to the property in 2003, but never had a separate suite in the home where he lived.
- The applicant never paid any rent for living at the property or contribute in any significant way to improve the property.
- The applicant was not living with his mother as a caregiver, as she has been perfectly healthy most of her life.
- While living on the property, she considered him living there as a son, never as a tenant.

### Analysis

In order for the applicant to succeed in this application, the applicant must show that the *Residential Tenancy Act* applies. In order to find the Act applies, I must be satisfied that the parties entered into a tenancy and that the parties had a landlord and tenant relationship.

Residential Tenancy Policy Guideline 27 states that the Residential Tenancy Branch does not have the authority to hear all disputes regarding every type of relationship between two or more parties. The jurisdiction conferred by the Legislation is over landlords, tenants, and strata corporations.

In this case, I find that a tenancy was never formed between the parties. I find the applicant lived at the property in question from childhood and off and on until 2016. In 2016, by the applicant's own evidence, he has lived in another primary residence.

I find the evidence shows that the property in question was the family home, in which the tenant lived during childhood and at times during his adulthood. Despite a change in ownership from his mother to his sister, the applicant continued to live there and I find the evidence shows that his continued occupation was that of a family member, not a tenant.

I find the applicant has presented no evidence that a tenancy agreement was ever formed between him and his mother or later, between him and his sister. The undisputed evidence is that no monthly rent or security deposit was ever paid. I do not find sufficient evidence that the monthly rent was paid by in-kind services.

I was not provided any evidence that a consensus was ever reached between the parties that a tenancy agreement was contemplated or agreed upon.

For the above reasons, I therefore find that the applicant and respondent had not entered into a tenant-landlord relationship.

As a result, I find upon a balance of probabilities that a tenancy agreement did not exist between the parties and I therefore decline to find jurisdiction to resolve this dispute.

The applicant is at liberty to seek the appropriate legal remedy to this dispute.

### Conclusion

I do not find the *Residential Tenancy Act* applies to this dispute and I have declined jurisdiction.

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: May 11, 2021

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Residential Tenancy Branch