



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, FFT

### Introduction

This hearing was convened in response to an application pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the Landlord’s compliance - Section 62; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Does the Act apply to the dispute?

### Background and Evidence

The following are agreed or undisputed facts: the applicant rented a basement suite from the Respondents who lived in the upper part of the house. The basement suite was not secured separately from the upper part of the house. The Respondents informed the Applicant at the outset of the rental that they rented the whole house from their landlord and that they did not own the house. The Applicant paid rent to the Respondents however the Respondents were responsible for the rental amount for the whole house including the basement suite. The Respondents had no authority from their landlord to rent out the basement suite on the Landlord’s behalf.

### Analysis

Section 1 of the Act defines "landlord", in relation to a rental unit, includes

- (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.

Policy Guideline #19 provides as follows:

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act.

Based on the undisputed facts that the Respondents rented the full house containing the basement suite from a landlord and that the Respondents were not acting on behalf of their landlord in renting this part of the house, I find that the Act does not apply as the Respondents are not landlords under the Act. I therefore may not resolve the dispute and the application is dismissed.

Conclusion

The dispute is not under the jurisdiction of 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 Act.

Dated: May 28, 2021

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Residential Tenancy Branch