



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL OLC RP

### Introduction

This hearing dealt with an Application for Dispute Resolution (application) by the applicants to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, for repairs to the unit, site or property, and for an order directing the landlord to comply with the Act.

The respondent and the respondent's spouse, EH (spouse) attended the teleconference hearing. As the applicant did not attend the hearing, after the 10 minute waiting period the application would normally be dismissed without leave to reapply; however, the respondent raised an issue related to jurisdiction which I will address below.

The respondent was informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The respondent was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the respondent was informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The respondent had no questions about my direction pursuant to RTB Rule 6.11.

In addition, the respondent confirmed their email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them and would also be emailed to the applicants.

### Preliminary Issue

The first issue that I must decide is whether the Act has jurisdiction over the parties in order to proceed with the application.

The tenancy agreement submitted in evidence supports that the rental unit is the same for both parties. The respondent testified that they are the tenants renting the whole home and that the applicants are roommates.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the following.

Section 1 of the *Act* defines “landlord” as the following:

**“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 respondent under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this;

[Emphasis added]

Based on the above, I find the applicants are occupants and the respondent is a tenant and not a landlord under the Act.

Policy Guideline 13 of the Residential Tenancy Policy Guidelines section H states:

Where a tenant allows a person who is not a tenant to move into the premises and share rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

In this case, the respondent allowed two other people to move into the rental unit and occupy a room. There was no evidence provided that a new tenancy agreement with the owner of the rental unit to have the applicant added as a co-tenant. Therefore, I find the applicant is an occupant and not a tenant and has **no rights or obligations under the Act as a result.**

As this is a dispute between an occupant and a tenant, and not a dispute between a landlord and tenant, I find that I do not have jurisdiction to hear this dispute under the Act.

#### Conclusion

I decline to hear the applicant's application due to lack of jurisdiction under the Act.

This decision will be emailed to both parties as noted above.

I note the filing fee was waived.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 22, 2021

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Residential Tenancy Branch