



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, FFL

### Introduction

On May 28, 2021 an application was made by Direct Request under the *Residential Tenancy Act* ("the Act"). The Landlord was seeking an order of possession for the rental unit due to unpaid rent or utilities.

This matter proceeded by way of an ex parte Direct Request Proceeding, pursuant to section 55(4) of the Residential Tenancy Act. The ex-parte review was completed, and a Decision was issued on July 8, 2021. The adjudicator found there was no copy of a written tenancy agreement and ordered the matter be heard by participatory hearing. The Applicant /Landlord was ordered to serve the Tenant with the Notice of Reconvened Hearing.

The Applicant and Respondent attended the hearing. Both parties were assisted by legal counsel.

At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before me. The parties were informed that recording the hearing is not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

- Is the Landlord entitled to an order of possession based on an undisputed 10 Day Notice to End tenancy for Unpaid Rent?

### Background and Evidence

The Applicant's counsel acted as the interpreter for the Applicant. The Applicant testified that the tenancy began when the property was purchased 15 years ago. The Applicant and the Respondent are related. The Respondent is the daughter in law of the Applicant. When the property was purchased, the parties lived together, but later separated about seven or eight years ago and live apart in the upper and lower units of the home.

The Applicant testified that when the parties began living apart the Respondent and her husband began contributing to mortgage payments. The Applicant stated that the parties reached an oral tenancy agreement. When the Applicant was asked how much monthly rent was due under the oral agreement, he replied that the rent would vary from \$2,000.00 to \$2,100.00 and sometimes less. The Applicant stated that there was no security deposit or pet damage deposit required or paid. The Applicant did not prepare a written tenancy agreement.

The Respondent testified that she began living at the home in 2005. She testified that she has never paid any rent and that the house is in her husband's name and the Applicant's name. She testified that her husband was making payments; however, the payments were not for rent. The Respondent stated that there is no written or oral tenancy agreement. The Respondent testified that her husband has moved out of the home.

In reply, the Applicant's counsel stated that the Respondent's husband owns 1% of the home because the Applicant did not qualify for a mortgage on his own. Counsel referred to a title search document in the evidence that shows the Applicant has 99% ownership and the Respondent has a 1% ownership.

The Applicant testified that the Respondent was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 15, 2021 ("the 10 Day Notice").

The 10 Day Notice indicates that the Respondent has failed to pay rent in the amount of \$2000.00 which was due on January 1, 2021. The 10 Day Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant testified that she received the 10 Day Notice she called the residential Tenancy Branch and was informed that she did not need to dispute the Notice if she is not a Tenant. The Tenant did not dispute the 10 Day Notice.

The Landlord submitted that the Landlord should be granted an order of possession for the rental unit because there is an oral tenancy agreement, and the Tenant does not know how much money is to be paid for rent. Counsel submitted that the Courts have found that the standard terms of tenancy under the *Residential Tenancy Act* apply to oral tenancy agreements. Counsel submitted that there is a family tie, so the Applicant did not care about the rent amount varying. He stated that in exchange for living in the upstairs unit the Respondent would make payments towards the mortgage every month. Counsel stated that the Respondent received the 10 Day Notice and did not dispute it and therefore an order of possession can be issued.

In reply, the Respondents counsel submitted that there is no specific date when rent would be due. Counsel submitted that payments were towards the mortgage and not towards rent. She stated that the house is the Respondent's matrimonial home, and the Respondent has put a lien on the property. Counsel stated that there is a family law matter underway for an equitable divide of property at the Supreme Court and the notice of family claim has been filed and is in the process of being served.

### Analysis

As defined in the Act "tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

The Residential Tenancy Act defines a Landlord as follows: "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 landlord under a tenancy agreement or this Act in relation to the rental unit;*
- (d) a former landlord, when the context requires this.*

Section 2 of the Act provides that the Act applies to tenancy agreements, rental units and other residential property.

I have considered whether or not the parties entered into an oral tenancy agreement that would make this a Landlord vs Tenant matter under the Act.

Based on the testimony of the parties and documentary evidence of a title search before me, I find that the Applicant and Respondent's husband are co-owners of the home. My finding is supported by the testimony that the Respondent has placed a lien on the residential property and that an application is underway at the Supreme Court for an equitable division of property.

By the Applicants own testimony, the parties were occupying the home as co-owners/ family until 7 or 8 years ago. The Applicants suggestion of an oral tenancy agreement 7 or 8 years ago does not provide a specific amount of rent due each month and does not provide the date the rent payment is due as required under section 13(2) of the Act. I am mindful that the Applicant stated that in exchange for living upstairs the Respondent would make payments towards the mortgage each month. The lack of a specific amount of rent due each month and the testimony that varying amounts were paid lends support to my finding that there is no tenancy agreement.

It appears to me that this is a family dispute where the Respondent's husband has moved out of the home and stopped contributing to the mortgage payments. The Respondent has remained living in the home and the Applicant is attempting to remove her from the home.

Based on the above findings, I find that there is insufficient evidence from the Applicant to establish that there is a tenancy agreement under the Act, and I find that I do not have jurisdiction to hear this application.

### Conclusion

The application for an order of possession for the rental unit based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is dismissed as I find there is

insufficient evidence from the Applicant to establish that there is a tenancy agreement under the Act.

I decline jurisdiction to resolve the dispute.

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: August 25, 2021

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Residential Tenancy Branch