



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, MNDCL, OPL-4M

### Introduction

On June 15, 2021, the Applicant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting an Order of Possession for the rental unit and a Monetary Order for damages. The matter was set for a participatory hearing via conference call.

The Applicant, the Respondent and the Respondent’s counsel attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. As such, I find that the evidence before me is admissible for this hearing.

### Preliminary Matter - Issues

The Applicant, at the beginning of the hearing, clarified that he was not making a monetary claim and confirmed that this issue should be removed from the Application.

In accordance with Section 64(3) of the Act, I have amended the Applicant’s Application by removing the request for monetary damages.

### Preliminary Matter – Jurisdiction

The Respondent submitted that the Residential Tenancy Branch does not have jurisdiction over this matter as there has not been a tenancy established.

When the Applicant was asked if he was ready to proceed on the issue of jurisdiction, the Applicant stated that he was prepared.

I advised the parties that I would first address the issue of jurisdiction and if necessary, consider the Applicant’s Application for an Order of Possession.

### Issues to be Decided

Does the Residential Tenancy Branch have jurisdiction over this matter?

If the Residential Tenancy Branch has jurisdiction, should the Applicant be issued an Order of Possession, in accordance with section 55 of the Act?

### Background and Evidence

The Applicant provided the following affirmed testimony:

- There is no written Tenancy Agreement
- There is only a verbal Tenancy Agreement
- The tenancy began on October 27, 2009
- There was no rent established
- There was no money exchanged between the Applicant and the Respondent regarding the Respondent's living arrangements
- The Respondent has lived on the residential property for 12 years
- The Respondent is the Applicant's father
- No security deposit or pet damage deposit was collected
  
- The Respondent agreed to move from the residential property on February 27, 2021
- The Respondent changed his mind and advised the Applicant that he was going to stay, on March 8, 2021
- The Applicant personally served the Respondent a "Notice to Quit", dated February 20, 2021, on March 9, 2021
- No Notice to End Tenancy, in accordance with the Act, was served to the Respondent

### Analysis

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

Section 6(1) of the Act states the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.

A tenancy agreement is defined in the Act as 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.

Under a tenancy agreement, the tenant has exclusive possession of the site or 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.

In this case, I find that the Applicant has failed to provide sufficient evidence that a tenancy agreement was established pursuant to the Act. Specifically, I find the Applicant failed to prove that there has been a term for possession established for a rental unit; nor has the Applicant proven that the Respondent pays a fixed amount for rent. By the Applicant's own admission; the Respondent has been living on the property for 12 years without paying rent.

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

Based on the evidence before me, I am not satisfied that this is a landlord and tenant dispute over which I have jurisdiction under the Act. As a result, I decline to hear this matter for lack of jurisdiction, and I encourage the parties to seek independent legal advice in relation to this matter.

#### Conclusion

As the Act does not apply to these parties, I find that I do not have jurisdiction in this matter, and I dismiss the Application for Dispute Resolution.

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: October 19, 2021

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Residential Tenancy Branch