



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPT

### Introduction

The Applicant seeks an order for possession for a rental unit pursuant to s. 54 of the *Residential Tenancy Act* (the “Act”).

J.W. appeared on his own behalf as Applicant. C.P. appeared on her own behalf as Respondent.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Applicant advised that he had the assistance of an advocate, who was unable to attend the hearing. The Applicant indicates that the advocate had served the Respondent with the relevant documents. A proof of service form signed by the advocate says a package was sent by way of registered mail on December 9, 2021. It does not specify what was included in the registered mail package. The Applicant confirmed the registered mail included the Notice of Dispute Resolution but was unable to confirm whether the package included his evidence. A tracking receipt was uploaded into evidence by the Applicant.

The Respondent acknowledges receipt of the Notice of Dispute Resolution and evidence. However, she says it was received by way of email from the Applicant’s advocate. The Respondent says she received the Notice of Dispute Resolution on December 27, 2021 and the Applicant’s evidence on December 28, 2021. The Respondent also states that she received a note to pick up a package from Canada Post on December 10, 2021 and that it was not at the post office on the two occasions she went to retrieve the package.

I have reviewed the tracking information provided by the Applicant. It shows the package was sent to the Respondent on December 9, 2021 and that a notice card was left with the Respondent on December 13, 2021. The package has not been picked up and a final notice was delivered on December 20, 2021.

Policy Guideline #12 states the following with respect to service via registered mail:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

The Applicant is entitled to serve the Notice of Dispute Resolution by way of registered mail in accordance with s. 89 of the *Act*. Policy Guideline #12 is clear that failing to pick up registered mail sent to the correct address does not impact the deemed service provisions of the *Act*. Based on the Applicant stating the registered mail included the Notice of Dispute Resolution, I find that it was served in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Respondent was received the Notice of Dispute Resolution on December 14, 2021.

The Applicant was unable to demonstrate that the registered mail sent on December 9, 2021 included his evidence as he was uncertain on this point. The Respondent acknowledged receipt by way of email on December 28, 2021. Rule 10.3 of the Rules of Procedure contemplates that an applicant must serve their evidence and the Notice of Dispute Resolution within 1 day of receiving the Notice of Dispute Resolution from the Residential Tenancy Branch. The Applicant was unable to demonstrate that this occurred here.

The Respondent advises that she served responding evidence on the Applicant by way of email sent to his advocate on December 28, 2021. The Applicant acknowledges receiving the Respondent's evidence. The Respondent has not uploaded her evidence to the Residential Tenancy Branch.

There are a number of issues with respect to service of the parties' evidence. Email does not appear to be an approved form of service by the parties as contemplated by the Regulations as no written proof of service form was provided. The Applicant's evidence may have been included in the registered mail sent on December 9, 2021, but

he was unable to confirm this detail with me. The Applicant's evidence, when it was received by the Respondent, was late.

Considering the overlapping issues with respect to service of evidence, I find that pursuant to s. 71(2) of the *Act*, the Respondent was sufficiently served with the Applicant's evidence based on her acknowledged receipt of the evidence on December 28, 2021. I include the Applicant's evidence in light of the fact the Respondent was able to provide responding evidence to the Applicant, which indicates that she was not prejudiced in her ability to respond to the Applicant's application.

With respect to the Respondent's evidence, I accept that service by way of email is not approved by the parties in this case. However, the Applicant acknowledges receipt of the Respondent's evidence. Based on the Applicant's acknowledgment, I find that pursuant to s. 71(2) of the *Act* the Applicant was sufficiently served with the Respondent's evidence.

As the Respondent has failed to provide her evidence to the Residential Tenancy Branch in advance of the hearing as contemplated by Rule 10.4 of the Rules of Procedure, I exercise my discretion under the Rules of Procedure and permit the Respondent an opportunity to do so. I directed that the Respondent upload her documentary evidence to the Residential Tenancy Branch by the end of day on December 30, 2021. I advised the Respondent that should she fail to upload the evidence served on the Applicant to the Residential Tenancy Branch within this timeframe would result in me writing this decision without reviewing her materials. The Respondent has failed to upload the evidence as directed and this decision was made without reviewing the Respondent's documentary evidence.

#### Issue(s) to be Decided

- 1) Is the Applicant entitled to an order for possession for the rental unit?

#### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties advised that the Applicant began to occupy a room at the residential property on November 13, 2021. There does not appear to be a written tenancy agreement signed by the parties. The parties confirmed that rent for the room was \$1,000.00 per month.

The parties confirmed that the residential property is a single detached home with a separate rental unit in the basement. The Respondent lives at the residential property. The basement unit has its own kitchen and bathroom.

The Respondent indicates that she rented the Applicant a room within the residential property. Rent of \$1,000.00 was to be subsidized in the amount of \$550.00 from provincial rent assistance for which the Applicant qualified. The Respondent says that the intention was that the Applicant would occupy a room on the main floor of the residential property with the Respondent and that the remaining portion of the rent, being \$450.00, would be paid through work around the house to be completed by the Applicant.

The Respondent says that despite the intention that the Applicant live in a room on the main floor, he moved into a room in the basement based on the Applicant's desire for more privacy. The Respondent says that there is a door separating the main floor from the basement unit, but that it was never closed and that she went into the basement and treated the residential property as a single unit.

The Applicant admits that the arrangement was to rent a room within the residential property but denies the general characterization that the balance of rent was to be paid by work completed at the property.

A shelter information form was submitted by the Applicant and signed by the Respondent on November 16, 2021. The form shows that the rental started on November 13, 2021, shows the residential property address, and indicates that the accommodation was for room only and that common areas were shared with the Respondent. The form does not show that the rental address was for the basement suite. The Respondent acknowledges signing this document.

Matters between the parties appears to have deteriorated after an incident that took place on November 20, 2021. The Applicant says that the Respondent was demanding and treated him poorly. The Respondent says that rent had not been paid, that the

Applicant took issue with the work to be done around the house and that he complained of back issues, which were being aggravated by the work.

The Respondent says that it was on November 20, 2021 that the Applicant notified her in person that he no longer wished to reside at the residential property. The Applicant denies given notice to vacate the room.

At around the same time, the Applicant indicates that he prepared a handwritten note which he says proves a tenancy existed. The Applicant says the note was prepared on November 20, 2021. The document indicates monthly rent of \$1,000.00, rent prorated to \$566.00 for the partial month's rent in November 2021, and various deductions to rent based on work the Applicant says he completed around the residential property. The note is signed by the Respondent. The Applicant did not sign the note.

The Respondent indicates that she did sign the note on November 22, 2021 and that she did so under duress as the note was presented to her by the Applicant. She says that the Applicant is much larger than she is and that she is of advanced age. She further says that she felt physically threatened by the Applicant on the occasion and signed the note out of fear and a desire to end the confrontation.

Rent appears to have been paid on November 22, 2021 in the amount of \$438.50, as specified in the note prepared by the Applicant. The Respondent says rent of \$550.00 should have been paid on November 15, 2021.

According to the Respondent, after the events of November 20-22, 2021, the Applicant did not frequent the residential property. The Respondent admits that she was away from the residential property, though she says that this was out of fear of interacting with the Applicant.

On November 26, 2021, the Respondent sent a text message to the Applicant to notify him that the arrangement was not working and that she removed the Applicant's belongings from his room and placed them on the front porch. The text message was put into evidence by the Applicant. The Respondent confirmed sending the text message to the Applicant on November 26, 2021.

The Applicant indicates that he has been without a home since being ejected from the residential property on November 26, 2021.

## Analysis

The Applicant seeks an order for possession for the rental unit from the Respondent.

Section 54 of the *Act* permits the director to grant an order of possession for a rental unit to a tenant who has entered into a tenancy agreement with a landlord with respect to the rental unit. It is the Applicant's onus to prove his claim

The primary issue here is whether the *Act* applies at all. Section 4(c) of the *Act* specifically states that the *Act* does not apply to "living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation". There is no dispute that the Respondent is the property owner. There is no written tenancy agreement providing clarity with respect to the arrangement the parties had.

The parties were clear that the residential property has a separate rental unit in the basement, with its own kitchen and bathroom, and in which the Applicant resided. I place significant weight on the Applicant's admission that the arrangement was that he would rent a room from the Respondent, and not basement rental unit. This corresponds to the Respondent's submission that it was her understanding that her arrangement with the Applicant was one between roommates and that the door to the basement unit was never closed.

I find support for this understanding based on the shelter information form signed by the Respondent on November 16, 2021 and submitted into evidence by the Applicant. Though the form sets out at the top that it is not a tenancy agreement, it supports the characterization of the parties' arrangement as explained at the hearing. Further, it clearly sets out that the Applicant was to rent a room only with shared living accommodations and makes no reference to the Applicant renting the basement unit as a self-contained unit.

I find that the residential property, though having a separate rental unit in the basement, was not treated as two separate units and that the door to the upstairs and downstairs was not closed. The parties treated the residential property as one unit. I further find that the parties' arrangement was that the Applicant would rent a room and share facilities with the Respondent. Based on the parties' arrangement that the Applicant would rent a room and share the other facilities, the *Act* does not apply by virtue of s. 4(c).

As the *Act* does not apply to the parties' arrangement, I do not have jurisdiction to grant the relief requested by the Applicant. Accordingly, his application is dismissed.

### Conclusion

The parties' arrangement was that the Applicant would rent a room and share facilities with the Respondent, which is an arrangement specifically excluded from the *Act* by virtue of s. 4(c). As the *Act* does not apply, I do not have jurisdiction to grant the relief sought by the Applicant. Accordingly, the Applicant's application is dismissed without leave to reapply.

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: December 31, 2021

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Residential Tenancy Branch