



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, MNDCL, MNDL, FFL

### Introduction

The Applicant seeks an order granting a monetary order for utilities and damages including the cost of the dispute resolution fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on January 7, 2022.

The Applicant completed the application for dispute resolution on March 9, 2021. The Respondent attending the hearing confirmed that they received this Notice and the Applicant’s evidence.

The Applicant did not attend the hearing, although I left the teleconference hearing connection open until 1:44pm to enable the parties to call in to this teleconference hearing scheduled for 1:30pm. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed throughout the duration of the call that the Applicant was not in attendance.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply.

### Preliminary Matter -- jurisdiction

I proceeded with the hearing and heard the Respondent’s submissions on the key issue of jurisdiction in this matter.

The Act s. 2 is clear in setting out that it applies only to tenancy agreements, rental units and other residential property. A tenancy agreement is defined as an agreement, whether written

or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit.

The onus is on the Applicant to prove that a tenancy exists. The Respondent, who attended, provided that they never paid rent of any kind to the Applicant, and never resided in the rental unit identified on the Application.

Given that the *Act* applies only to tenancy agreements, and there is no proof of a tenancy agreement in place between the Applicant and the Respondent, I find the *Act* does not apply to this situation. Between the Applicant and Respondent, there is no landlord-tenant relationship, and there are no contractual rights under the *Act*.

In sum, the provisions of the *Act* do not apply to the situation at hand. Based on these facts and an application of the legislation, I do not have jurisdiction to hear this Application.

The Respondent in the hearing stressed this has become a matter of nuisance to them, and cited s. 87.3 of the *Act* that allows for the director to impose administrative penalties. I note the provisions of *all parts* of the *Act* apply to only the contractual relationship specified in s. 2, set out above. With no tenancy agreement in place, I have no jurisdiction to impose other penalties stemming from the *Act*.

### Conclusion

Having declined jurisdiction in this matter, I dismiss this Application in its entirety, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: January 7, 2022

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Residential Tenancy Branch