



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, MNDCL, FFL

### Introduction

The Applicant filed the Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) for an Order of Possession and the filing fee. They amended their Application to include a claim for compensation for their monetary loss. The matter proceeded by way of a hearing pursuant to s. 74(2) on January 7, 2022. In the conference call hearing I explained the process and provided the parties the opportunity to ask questions.

The Respondent confirmed receipt of the Notice of Dispute Resolution, delivered via registered mail on September 16, 2021. They confirmed receipt of the Applicant’s prepared documentary evidence.

### Preliminary Issue - Jurisdiction

The Notice of Dispute Resolution shows the Applicant as the ‘landlord’, and the Respondent as the ‘tenant in this matter. The Applicant provided that there is a verbal agreement between the parties in place.

The parties are related as family. They both provided details in the hearing to establish that the Respondent moved into the Applicant’s property in 2017. The amount of money paid by the Respondent on a monthly basis has adjusted from the initial \$1,100, to \$550 over a period of approximately one year, to the current amount of \$1,200. The Respondent paid no security deposit or pet damage deposit at any time during this arrangement which continues through to the present.

The Respondent in the hearing stating they were paying monthly amounts to the Applicant “in the hopes of their future investment” which involves an inheritance of the property from the Applicant’s own will. This separate legal process was ongoing as of the time of this hearing.

The *Act* sets out what it applies to in section 2: “tenancy agreements, rental units and other residential property.” There is a presumption that a tenancy has been created if a tenant pays a fixed amount for rent. Another distinguishing feature of a tenancy agreement is the payment of a security deposit. From weighing the evidence and considering the submissions of both parties, I find the situation is not that of a residential tenancy.

For one, what the parties referred to as “rent” varies from month-to-month, and the statement of the parties in the hearing, as well as the evidence, show the Landlord conceding on rent payments on certain months where necessary. Additionally, there is a line-of-credit in place that both parties are accessing for matters of upkeep or maintenance on the property. I find this shows more of an ownership stake in the property rather than a tenancy. Further, the Respondent here provided that they never paid a deposit of any kind. This would normally be a consideration in the formation of a contract between the parties, here absent. The Applicant confirmed there was never any deposit paid. I find the parties have a family relationship, and occupancy was given to the Respondent because of generosity rather than business considerations.

Given that there is no tenancy agreement, the *Act* does not apply to this situation, and I do not have jurisdiction to hear this Application.

### Conclusion

Having declined jurisdiction to hear this matter, I dismiss this Application for Dispute Resolution in its entirety, without leave to reapply. With this dismissal, the Applicant is not entitled to recovery of the filing fee.

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 10, 2022

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Residential Tenancy Branch