



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC, MNDCT, LRE, PSF, LAT, OT, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Applicant on October 20, 2021 (the "Application"). The Applicant applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities
- For an order that the landlord comply with the Act, regulation and/or the tenancy agreement
- For compensation for monetary loss or other money owed
- To suspend or set conditions on the landlord's right to enter the rental unit
- For an order that the landlord provide services or facilities required by the tenancy agreement or law
- For authorization to change the locks to the rental unit
- To recover the filing fee
- For other issues not listed

This hearing was set for 11:00 a.m. The Respondent and A.S.A., the co-owner of the rental unit, appeared seven minutes late. The Applicant did not appear at the hearing which lasted 29 minutes.

The Respondent provided their correct legal first name which is reflected in the style of cause.

The Respondent and A.S.A. advised that the Applicant is still living in the rental unit and they are seeking an Order of Possession for the unit.

I explained the hearing process to the Respondent and A.S.A. who did not have questions when asked. I told the Respondent and A.S.A. they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Respondent and A.S.A. provided affirmed testimony.

#### Preliminary Issue - Service

The Respondent submitted evidence prior to the hearing. The Applicant did not submit evidence. I addressed service of the hearing package and Respondent's evidence. The Respondent confirmed receipt of the hearing package. The Respondent and A.S.A. testified that their evidence was posted to the door of the rental unit February 15, 2022 and noted a Proof of Service in evidence.

Based on the undisputed testimony of the Respondent and A.S.A., as well as the Proof of Service, I accept that the Applicant was served with the Respondent's evidence in accordance with section 88(g) of the *Residential Tenancy Act* (the "*Act*") on February 15, 2022. Pursuant to section 90(c) of the *Act*, the Applicant is deemed to have received the evidence February 18, 2022. I note that the Respondent served their evidence one day late pursuant to rule 3.15 of the Rules; however, the Applicant did not appear at the hearing to dispute admissibility of the Respondent's evidence and therefore I have considered it.

#### Preliminary Issue - Jurisdiction

The Respondent and A.S.A. took the position that the Applicant is an occupant of the rental unit, not a tenant, and testified as follows. The unit was rented to the Applicant's boyfriend. No written tenancy agreement was completed. The Applicant's boyfriend paid a \$700.00 security deposit. The Respondent gave the keys to the unit to the Applicant's boyfriend in May of 2021. The Applicant's boyfriend moved into the unit and lived there for some period. The Respondent and Applicant's boyfriend agreed rent would be \$1,500.00 per month. The Respondent understood that the Applicant's boyfriend would be the only tenant of the unit. The Applicant paid May rent and was issued a receipt for this; however, it was understood that the Applicant was an occupant of the unit. No further payments were accepted from the Applicant. The Applicant's boyfriend moved out of the unit at some point; however, the Applicant remained in the unit. The Applicant's boyfriend was the tenant of the unit and the Applicant was only an occupant of the unit.

Policy Guideline 13 deals with tenants, co-tenants and occupants and states in part the following:

## B. TENANTS AND CO-TENANTS

A tenant is a person who has entered a tenancy agreement to rent a rental unit or manufactured home site. If there is no written agreement, the person who made an oral agreement with the landlord to rent the rental unit or manufactured home site and pay the rent is the tenant. There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. “Jointly and severally” means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement...

## H. OCCUPANTS

If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant. Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant.

Before allowing another person to move into the rental unit, the tenant should ensure that additional occupants are permitted under the tenancy agreement, and whether the rent increases with additional occupants. Failure to comply with material terms of the tenancy agreement may result in the landlord serving a One Month Notice to End Tenancy for Cause. Where the tenancy agreement lacks a clause indicating that no additional occupants are allowed, it is implied that the tenant may have additional occupants move into the rental unit. The tenant on the tenancy agreement is responsible for any actions or neglect of any persons permitted on to the property by the tenant.

(emphasis added)

I accept the undisputed testimony of the Respondent and A.S.A. and find that the Applicant's boyfriend was the tenant of the rental unit and has now vacated the rental unit. I find the Applicant has only ever been an occupant of the rental unit with no rights or obligations under the *Act*. Given this, the Applicant was not entitled to file the Application against the Respondent. Further, the Respondent is not entitled to an Order of Possession in relation to the Applicant because there is no contractual relationship between the Applicant and Respondent and the *Act* does not apply to these parties.

The Application is dismissed without leave to re-apply because the *Act* does not apply to these parties.

The Respondent is not entitled to an Order of Possession pursuant to section 55(1) of the *Act* in relation to the Applicant because the *Act* does not apply to these parties.

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

Dated: February 28, 2022

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Residential Tenancy Branch