



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, FFT

### Introduction

The Applicants (hereinafter the “Applicant”) filed an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”), claiming for the landlord’s compliance with the legislation and/or the tenancy agreement, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) on March 15, 2022 and March 25, 2022. In the conference call hearing I explained the process and provided each attending party the opportunity to ask questions.

The Applicant and Respondent both attended the hearing, and I provided the opportunity for each to present oral testimony and make submissions during the hearing.

### Preliminary Issue – Jurisdiction

The Notice of Dispute Resolution, generated by the Residential Tenancy Branch from the Application, names the Respondent as the landlord in this matter. The Respondent submitted they had no contractual relation with the Applicant here, with no contract in what was a shared living arrangement. The owner of the rental address was not named as a Respondent in this matter. In their written submission the Respondent stated: “They [i.e., the Applicant] were both aware I sub-rent rooms to occupants.” They also clarified that “The basement is not a separate unit and it’s rented per room and not as a whole unit. . . [The Applicant] shared the space with other roommates and me.”

The Applicant submitted that the Respondent, while insisting on being their roommate, does not actually live there” and “visits only on rare occasions.” Addressing this specifically in the hearing, the Respondent stated they do live upstairs, and the rental address was the main address where they live.

In their written submission, the Applicant named another person as the “owner”, that person who “actually owned the house” and “sold off the house to another man in November.” Their submission also contained the following points:

- the Respondent posted a rental advertisement to which they applied and signed a formal rental contract
- the Respondent collected monthly rent from each of the six rooms in the rental address
- the basement is completely separate from the main floor, with independent entry doors
- they did not share a kitchen or bathroom with the Respondent.

The Applicant submitted a log of all text messages between them and the Respondent. The subject of the Respondent living at the rental address was discussed on more than one occasion. On October 20, 2021, the Respondent stated: “I mostly sleep over at my girl friend house, but I have a room upstairs and sometimes I go back.” On October 25, they stated: “I live here. I have a girlfriend now, and I’m staying at her house most of the time, but I live upstairs.”

I consult the *Act*, which defines “landlord”:

“**landlord**”, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner’s agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement

The *Act* defines “tenancy agreement” 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 license to occupy a rental unit.

The *Residential Tenancy Policy Guidelines* are established to give statements of the policy intent of the *Act*. The *Policy Guideline 19. Assignment and Sublet* provides as follows:

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space

within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the *Residential Tenancy Act*.

I find the Respondent here is the “tenant” as set out in the Guideline, making the Applicant here the third party, considered a roommate. Though the Respondent here referred to their role as subletting the rental unit to the Applicant, I find that is not the case because they did not grant the Applicant exclusive occupancy to the rental unit.

In sum, the Respondent here is a *tenant* who occupies the rental unit. I accept their statements, as stated plainly to the Applicants via text as set out above, that they also reside primarily in the rental unit, with no evidence to the contrary presented by the Applicant here. The Respondent does not meet the definition of a landlord, pursuant to s. 1 of the *Act*. I find the Applicant here is not a tenant of the Respondent; rather, they are another occupant, or a roommate.

Based on these facts, and an application of the *Act*, I do not have jurisdiction to hear this Application. With no landlord-tenant relationship, there is no “tenancy agreement” as defined in the *Act*, and s. 2 of the *Act* is explicit that it only applies to tenancy agreements.

### Conclusion

Having declined jurisdiction to hear this matter, I dismiss this Application for Dispute Resolution 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: April 12, 2022

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Residential Tenancy Branch