



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC

### Introduction

This hearing was convened as a result of the Applicant's Application for Dispute Resolution, made on April 21, 2022 (the "Application"). The Applicant applied for an order that the Landlord comply with the regulations, tenancy agreement or the *Act*, pursuant to the *Residential Tenancy Act* (the "*Act*").

The Applicant, the Respondent, and the Respondent's Counsel I.A. attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

At the start of the hearing, the parties were given an opportunity to testify to the terms of the living arrangement between them. The parties testified and agreed to the following;

The Applicant moved into the home with her grandmother who is part owner of the home, on August 19, 2019. The Applicant and her grandmother shared the home up until December 2021 at which point the grandmother moved out to reside in a care home. The parties confirmed that there is no written tenancy agreement between them. The parties agreed that the Applicant has never been required to pay rent and has not paid a security deposit. The Applicant stated that she feels as though she was given

permission from family members to reside in the home and that the Respondent is trying to end the living arrangement.

Based on the above, and on a balance of probabilities, I find the following.

Firstly, the definition of “rent” applies and states in section 1 of the *Act* as follows:

**"rent"** means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];

[My emphasis added]

In addition, section 2 of the *Act* applies and states:

**What this Act applies to**

**2** (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

[My emphasis added]

Section 4(c) of the *Act* confirms that the *Act* does not apply to living accommodation in which the owner shares bathroom or kitchen facilities with the Respondent. In this case, the Applicant testified that she shared the home with the part owner, which includes the kitchen as well as bathroom facilities.

Based on the evidence before me, I find there is insufficient evidence to support that a tenancy agreement exists between the applicant and the respondent. In reaching this finding I have considered that there is no written tenancy agreement, the parties are family members, and that the Applicant was not required to pay rent in exchange for the right to possess the home. I find that there is no tenancy agreement, written, oral or implied. As such, I find that the Act does not apply in accordance with Section 2 of the *Act*.

I further find that the Applicant shared the home with the owner from the start of the living arrangement in August 2019 until December 2021. I find that the Act does not apply to this living arrangement in accordance with Section 4 of the *Act*. I find that the Applicant provided insufficient evidence to demonstrate that the terms of the living situation have changed to indicate that a tenancy has been created.

Based on the above, I decline this application due to lack of jurisdiction under the *Act*.

### Conclusion

I find the *Act* does not apply to the living arrangement described at the hearing. The Application is dismissed without leave to reapply. The parties should seek legal advice from their lawyer as to how to resolve this dispute.

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: August 22, 2022

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Residential Tenancy Branch