



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes** OPU, MNDL, MNRL, MNDCL

### **Introduction**

This hearing dealt with the Applicant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for non-payment of rent pursuant to section 55;
- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$750.00 pursuant to section 67;
- a monetary order for unpaid rent and for damage to the unit in the amount of \$750.00 pursuant to section 67;
- a monetary order for damage to the rental unit in the amount of \$1500.00 pursuant to section 67;

The Respondents did not attend this hearing, although I left the teleconference hearing connection open until 10:08 a.m. in order to enable the Respondents to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Applicants and I were the only ones who had called into this teleconference.

There are three (3) Applicants who own the property. Applicants, AKS1 and AKS2, attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Applicant LKS was unable to attend due to illness. AKS1 was the spokesperson for the Applicants.

AKS1 testified she served each Respondent with the notice of dispute resolution form and supporting evidence package via registered mail on August 24, 2022. AKS1 provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the Respondents were deemed served with this package on August 29, 2022 five days after the Applicants sent it registered mail, in accordance with sections 88 and 90 of the Act.

Additionally, the Applicants testified that the packages were also served to each of the Respondents by email and also hand delivered.

At the outset, I advised the Applicants of rule 6.11 of the Residential Tenancy Branch (the “RTB”) Rules of Procedure (the “Rules”), which prohibits participants from recording the hearing. The Applicants confirmed that they were not recording the hearing. I also advised the Applicants that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

**Preliminary Issue: Jurisdiction**

The Applicants issued the Notices to the Respondents and contacted the RTB, as advised by the police. After speaking with an RTB Information Officer and explaining the steps they had taken, the Officer recommended they file for Dispute Resolution. The Applicants were confused as to why they would file for dispute resolution with the RTB when there was no landlord-tenant relationship between them and the Respondents. Notwithstanding, they submitted their application to the RTB as recommended.

According to the tenancy agreement, the Applicants entered into a written fixed term tenancy agreement with ND and KS starting November 1, 2021, ending October 31, 2022. The tenancy would then continue on a periodic month-to-month basis. Monthly rent was \$1500.00, payable on the first of each month. The tenants paid a security deposit of \$750.00. The Applicants still retains this deposit. Any additional occupants in the basement suite required prior approved consent of the landlords.

The rental unit is a three (3) bedroom basement suite. The Applicants live upstairs. AKS1 testified that shortly after ND moved in, he asked the Applicants if his six (6) cousins could move into the basement suite as his roommates. The Applicants gave ND permission. The existing tenancy agreement was not amended neither was a new tenancy agreement drafted and no additional rent was collected. ND remained responsible for paying the rent as per the original tenancy agreement and ensuring all occupants followed the rules in the addendum.

In the Spring of 2022, ND’s cousins moved out of the basement suite leaving one bedroom vacant. Without seeking the Applicants’ permission, ND rented out the spare bedroom to KK and GS and their 11-month-old child.

On June 2, 2022, AKS1 stated her mother, LKS, noticed strangers on the property. She asked who they were and what they were doing on the property. The Respondents told LKS they were renting the spare room from ND. LKS told them to leave the property immediately as ND did not ask permission to rent out a room. The Respondents refused to leave stating they paid ND \$750.00 rent for June.

LKS was upset and relayed the information to AKS1 and AKS2. The Applicants felt that the living arrangements were inappropriate for an 11-month-old child and additionally, ND had not consulted them before allowing KK and GS to move in. Again, AKS1 reiterated and emphasized that KK and GS were ND’s unauthorized roommates and there was absolutely no

landlord/tenant relationship between the Applicants and the Respondents. The Applicants never asked for or receive money for rent from KK and GS. The rent was always paid by ND.

When the Respondents refused to leave the property, the Applicants asked for police help to remove the Respondents. Although a police file was created, the Applicants concerns noted, the Applicants were told to issue an eviction notice and file with the Residential Tenancy Branch.

By July 1, 2022, ND moved out of the basement suite without notice. No rent was paid after July 1, 2022. The Respondents, KK and GS, moved out sometime in the beginning of August 2022. The Applicants were unsure of the date.

AKS1 stated that there was significant damage to the basement suite that required repair and replacement. The fridge had to be replaced; a 'got junk' contractor was hired to remove the garbage left behind; and walls needed repair and painting. The basement suite has been repaired and re-rented to new tenants with a tenancy agreement in place.

On the question of jurisdiction, I considered several factors.

The Act in part 1 defines a "Tenancy" as follows:

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement.

"Tenancy agreement" is defined to include oral agreements, express or implied:

"tenancy agreement" means 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 licence to occupy a rental unit."

"Tenant" includes

- a) the estate of deceased tenant, and
- b) when the context requires, a former or prospective tenant

Under s. 45.1 "occupant" "means an individual, other than a tenant, who occupies a rental unit.

"Rent" is defined, in part, to include "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..."

It is the undisputed affirmed testimony of the Applicants that no landlord/tenant relationship existed between the Respondents, KK and GS, and the Applicants. The only landlord/tenant relationship for the basement suite was between the Applicants and ND and KS, confirmed by the Tenancy Agreement.

The s. 14 (2) of the *Act* states that once a tenancy has begun, terms of the tenancy agreement can only be changed or added to with the written agreement of both the landlord and tenant.

A Tenancy Agreement gives tenants a “right to possession of the rental unit”. The Tenancy Agreement of record is between the Applicants and ND and KS. There is insufficient evidence to show that this Tenancy Agreement was amended to include either the cousins or KK and GS as additional tenants or that the amount of rent payable varied with the number of occupants.

There is insufficient evidence to show that a new Tenancy Agreement, either “written or oral, express or implied”, was formed between the Respondents and the Applicants at any time during the Respondents’ tenure in the basement suite.

To further buttress a conclusion that KK and GS were not “tenants”, the evidence shows that ND remained responsible for paying the rent on the 1<sup>st</sup> of each month as per the Tenancy Agreement. I accept as fact the Applicants’ affirmed testimony that they neither demanded rent nor accepted rent from KK and GS.

I accept as fact, the Notices were issued, and dispute resolution sought based on the recommendation of the police and subsequent discussions with an Information Officer, not because the Applicants believed KK and GS were tenants. The Applicants consistently testified that all they wanted was for KK, GS, and their toddler to vacate the basement suite.

Additionally, I note ND asked the Applicants’ permission for his cousins to room with him but failed to seek permission before renting the bedroom to the Respondents. Policy Guideline #19 provides as follows:

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*.

It is the Applicants’ undisputed affirmed testimony that ND was not “acting as an agent of the landlord”. I therefore accept as fact, ND, while living in the basement suite, rented out a room within the rental unit to a third party without the Applicants’ permission or knowledge.

Taking into careful consideration the undisputed affirmed oral testimony of the Applicants and the documentary evidence before me and applying the law to the facts, I find on a balance of probabilities that the Applicants have met the onus of proving there was no Tenancy Agreement between the Applicants and the Respondents. I find a fair assessment of the evidence sufficiently dispositive to conclude that no landlord/tenant relationship existed. I find KK and GS were “occupants” not “tenants”, as defined in the *Act*.

The *Act* and Policy Guideline #19 is clear, “If there is no landlord/tenant relationship, the *Act* does not apply”. For the above reasons, I find that this is not a matter within the jurisdiction of the Residential Tenancy Branch. Accordingly, I decline jurisdiction over the Applicants’ application.

### **Conclusion**

I decline jurisdiction over the Applicants’ application. I make no determination on the merits of the application.

Nothing in my decision prevents the landlord from advancing their claims to a different forum of competent jurisdiction to settle the 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: September 28, 2022

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Residential Tenancy Branch