



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction, Preliminary and Procedural Matters-

This hearing dealt with the applicant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for compensation for a monetary loss or other money owed and recovery of the cost of the filing fee.

The applicant, the applicant's legal counsel (counsel) and the respondent attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. The applicant and respondent were affirmed.

Due to the evidence submissions of the parties, I informed the parties that I would consider whether I had jurisdiction to decide this dispute. The hearing began with a discussion of jurisdiction.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Issue(s) to be Decided

1. Does this dispute fall under the jurisdiction of the Residential Tenancy Act so that I have authority to resolve this dispute?
2. If so, is the applicant entitled to monetary compensation from the respondent?

### Background and Evidence

This dispute involves a father, as applicant, and a son, as respondent. The home in question is a trailer on the respondent's property. Counsel submitted that he would provide submissions as the applicant was extremely hard of hearing and that if the applicant needed to answer questions, he would write them down for the applicant. Counsel submitted that the applicant was an elderly man.

There is no written tenancy agreement and the parties disagreed as to whether there was a tenancy agreement at all.

The applicant submits that his occupancy in the trailer on the respondent's property was by way of a tenancy and the respondent denied a tenancy existed.

In his application, the applicant submitted that the tenancy start date was November 17, 2020 and the end date was November 22, 2021.

The undisputed evidence is that the respondent had an enduring power of attorney for the applicant, dated October 14, 2020. The power of attorney was revoked on September 17, 2021. Both documents were filed in evidence.

Counsel submits that the applicant and respondent orally agreed that the monthly rent was between \$350-450 per month, with food and all utilities included. Counsel submits that the respondent began withdrawing \$3,500 per month from the applicant's bank account using his authority under the power of attorney, which amounted to an arbitrary and illegal increase in monthly rent. The applicant's monetary claim is \$31,750.

Counsel filed a written submission, which in relevant part included the following:

- 3) In November 2020 there was an oral agreement for the Tenant to pay \$350-450/month with food and all utilities included. The Landlord arbitrarily placed new amounts to be owed as rent that were never agreed upon and was demanding them immediately, as well as a rent increase without giving the Tenant the appropriate notice periods for either. The Landlord was directly withdrawing \$3500 in rent a month through his Power of Attorney so the Tenant (Father) did not know how much was being charged until September 2021.
- 4) In September 2021 the tenant realized how much money was being taken from the account for rent and subsequently revoked the Power of Attorney.

- 5) Following the Landlord getting his Power of Attorney revoked, the Tenant was given an eviction notice and this dispute arose due to the Landlord not giving receipts as to how much was withdrawn for rent and arbitrarily changing the amount to \$3500.00 a month.

[Reproduced as written]

Respondent's response –

The respondent said there was never an agreement for \$350-\$450 in return for allowing the applicant to live in the trailer. The respondent said that the respondent's occupancy was intended for transitional housing, only, no longer than 2 months.

In a written submission, the respondent writes, in part:

Aug 2020 to Sept 2020 **DURING COVID PANDEMIK** (\*applicant name\*) is in (\*hospital name\*) undergoing rehab as he is no longer able to walk. I was told by the doctors his prognosis was poor and I should not expect him to live long. We were told he would no longer be able to live in his apartment due to the accessibility. Evidence F My wife and I then started to clean his apartment of all the hoarding he had been doing, the mess was incredible. Rat droppings silverfish and urine stains were everywhere. Rotting food in the fridge and piles of newspapers and boxes had to be sorted out. Attached is a letter from his previous landlord evidence B. In preparation for him to move in his furniture was organized and moved to my trailer. VIHA did not have a placement for him a senior facility which I was told would be a few months. I had to build a ramp for him to be able to get in to the trailer I also built a covered area over the front so that he could sit outside without getting wet. A septic holding tank was bought and set up.

Sept 15 2020 (\*applicant name\*) was evicted from the hospital I explained to him that in his current state I did not think I could look after him properly and it would be best if he went into a facility that could look after him properly. I looked into (\*assisted living facility\*) and costs which in his state would have been between \$4500 to \$5000 which he would have to pay evidence C. His answer was NO and he did not want to get vaccinated for covid 19 and that he would rather pay it to me, reluctantly I agreed to try until VIHA could find him public funded care which was supposed to be only a few months. We agreed on \$3500 a month which included everything. Evidence E 1 E2 and E3 This was also discussed with the regional manager of his financial institution (\*Bank name and representative name\*), and there was a note put on his account. Evidence I

Oct 14 2020 Power of attorney is appointed to me

October 2021 my neighbors are complaining about the awful odor coming from my trailer, which was (\*applicant name\*) dumping sewage on the ground and they called (\*local municipality\*) bylaw. They talked to me and I explained it is only an emergency and temporary situation. Evidence G. Realizing my father could no longer live in my trailer safely and that VIHA had no intentions of finding him placement I told him I would have to evict him. I am still not sure what happened next but I believe it was a VIHA employee that told him he should revoke my POA. evidence H. He cut of all communication and refused to pay the remainder of what was owed for September and October less \$550 and taking into consideration the loss of POA with a remainder of **\$6118.12 owing** . He has made numerous preposterous claims about only agreeing to pay \$550 per month which is what he paid for his suite on (\*another municipality\*).

[Reproduced as written except for anonymizing personal information to protect privacy]

Filed in evidence was an email from VIHA to the respondent, dated September 10, 2020.

### Analysis

I have reviewed and considered all relevant evidence submitted. I have referred to only the evidence, oral and written, required to make findings in the Decision.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. (Rule 6.6)

The applicant has the onus to prove that a tenancy agreement existed between the parties.

In order for the applicant/landlord to succeed in this application, the applicant/landlord must show that the *Residential Tenancy Act* applies. In order to find the Act applies, I must be satisfied that the parties entered into a tenancy and that the parties had a landlord and tenant relationship.

Section 1 of the Act defines a tenancy agreement, as follows:

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

Section 2 of the Act states:

(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.

In this case, I find there to be insufficient evidence that a tenancy agreement was formed between the applicant and the respondent.

I find the respondent's evidence compelling and persuasive that the applicant was released from the hospital into the care of the respondent and that the applicant needed a place to stay that provided home health care. In this case, I find the agreement was that the respondent and spouse would provide the health care while the applicant was living in the trailer. I find support for this finding in the emails from VIHA. During most of the applicant's occupancy, the respondent held a power of attorney for the applicant.

Additionally, the applicant's submission is that monthly rent was between \$350-\$450. I find this submission alone further shows that a tenancy agreement did not exist, as the monthly rent is to be a fixed amount, as contract terms must be sufficiently set out and unequivocal.

I find the evidence points to issues involving a family matter. I find it does not make sense that the agreement for payment was between \$350-\$450, and yet the respondent withdrew much larger sums using the power of attorney.

For the above reasons, I therefore find that the applicant and respondent had not entered into a tenant-landlord relationship.

As a result, I find upon a balance of probabilities that a tenancy agreement did not exist between the parties and I therefore decline to find jurisdiction to resolve this dispute.

The applicant is at liberty to seek the appropriate legal remedy to this dispute elsewhere.

Conclusion

I do not find the *Residential Tenancy Act* applies to this dispute and I have declined jurisdiction.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: December 17, 2022

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Residential Tenancy Branch