



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on April 18, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- An order of possession for the rental unit.

The hearing was convened by telephone conference call at 9:30 am on May 12, 2023, and was attended by the Applicant, the Respondent, and a support person for the Respondent, HA. All testimony provided was affirmed. As the Respondent acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), and stated that there are no concerns regarding the service date or method, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to the Residential Tenancy Branch Rules of Procedure (Rules of Procedure), recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Issue(s) to be Decided

Is there or was there ever a residential tenancy under the Act in place between the parties?

If so, is the Tenant entitled to an order of possession?

Background and Evidence

The parties provided conflicting testimony in relation to whether a residential tenancy under the Act exists or has ever existed between them. The Applicant, who is the adult child of the Respondent, stated that they had a verbal tenancy agreement in place with their late father, who passed away in 2018, to rent a portion of the self-contained basement suite, for \$500.00 per month. The Applicant stated that they shared this suite with two of their adult siblings, who are also required to pay rent. The Applicant stated that although they are not sure if their late father was on title for the property, their mother, who is the current property owner was aware of the verbal tenancy agreement. The Applicant stated that they have been locked out of the rental unit since October 20, 2021, when they were arrested due to false accusations made against them by their family member(s), and that the Respondent barred their access by changing the locks. The Applicant stated that since then, they have not had stable accommodation and sought an order of possession or the rental unit.

The Respondent denied any knowledge of a verbal tenancy agreement in place with their late spouse but agreed that their late spouse was previously on title for the property. The Respondent stated that they have provided accommodation for many of their adult children and share the entire home with them. The Respondent stated that although the Applicant is expected to pay room and board of \$500.00 if they have the funds, this is infrequent. The Respondent stated that there is no tenancy agreement in place under the Act, and that they simply allowed the Respondent to reside in one of the bedrooms in the lower suite because they are their child. Although the Respondent agreed that they have changed the locks and have not provided the Applicant with a new key, they stated that this was at the recommendation of the police after the Applicants arrest and that no tenancy agreement has ever been in place.

### Analysis

Based on the conflicting testimony provided by the parties regarding whether there is or was a tenancy between them under the Act, I find that I must first determine whether I have the jurisdiction to decide the claim made by the Applicant under the Act. Section 1 of the Act defines a 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 licence to occupy a rental unit. Section 1 of the Act also defines a tenancy as a tenant's right to possession of a rental unit under a tenancy agreement.

Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. In this matter it is the Applicant who has made a claim seeking an order of possession. As a result, I find that the Applicant bears the burden of proof with regards to whether the Act applies. For the following reasons, I am not satisfied that it does.

Although the Applicant argued that they did not share a kitchen or bathroom with their mother, who is the owner of the property, no corroboratory evidence or witness testimony was provided in support of this position and the Respondent explicitly stated that the entire home was shared between them and other family members. Further to this, the Applicant did not submit any of the things I would ordinarily see if a residential tenancy under the Act were in place, such as rent receipts or proof of rent payments, a tenancy agreement, or copies of communications between them about tenancy related matters.

I am not satisfied that the Applicant was required to pay a fixed amount of rent on a regular basis or that they had exclusive possession of any portion of the home. I also find it more likely than not that they shared kitchen and or bathroom facilities with the owner of the home, who is their mother, and resides in the property. Finally, I am also satisfied on a balance of probabilities that the Applicant was permitted occupancy of a portion of the home because of their family relationship with the owner, who is their mother, rather than for business considerations.

Having considered the conflicting testimony before me from both parties and the lack of documentary or other corroborative evidence from the Applicant in support of their position that a tenancy under the Act exists, I find pursuant to section 4(c) of the Act and

Residential Tenancy Policy Guideline (Policy Guideline) #9, that the Applicant has not satisfied me on a balance of probabilities that one does. As a result, I decline to decide their claim seeking an order of possession for lack of jurisdiction.

Conclusion

I decline to grant the Applicant's claim for an order of possession due to lack of 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 Act.

Dated: May 12, 2023

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Residential Tenancy Branch