



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL, FFL

### Introduction

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

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The respondents did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the respondents to call into this teleconference hearing scheduled for 11:00 a.m. Applicant M.R. (the "applicant") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 applicant and I were the only ones who had called into this teleconference.

The applicant testified that the respondents were served the notice of dispute resolution packages by registered mail on December 30, 2018. The applicant provided the Canada Post Tracking Numbers to confirm these registered mailings. I find that the respondents were deemed served with these packages on January 4, 2019, five days after their mailing, in accordance with sections 89 and 90 of the *Act*.

### Preliminary Issue- Jurisdiction

The applicant testified that in April of 2018 she and applicant J.R., her husband, purchased the property in question. The applicant testified that she and her husband allowed her sister in law, respondent V.R., to reside at the subject property free of charge because respondent V.R. was on disability and was not doing well financially.

The applicant testified that the verbal agreement the applicants had with respondent V.R. was that she was permitted to stay at the property free of charge as long as the following three rules were abided by:

1. Respondent V.R. was not to let garbage accumulate at the property;
2. Respondent V.R. was not permitted to let any other person, other than her children, move into the subject property; and
3. Respondent V.R.'s children were permitted to live at the property free of charge until they were 19 years of age. When Respondent V.R.'s children turned 19 they could stay at the subject property but would have to either pay rent, do chores, or be enrolled in full time post secondary studies.

The applicant testified that respondent V.R. asked the applicants if her boyfriend, respondent S.T., could move in with her. The applicants informed respondent V.R. that if respondent S.T. moved into the subject property, the verbal agreement outlined above would end and the respondents would be required to pay rent and sign a tenancy agreement. Respondent S.T. moved into the subject property, but the respondents refused to pay rent or sign a tenancy agreement.

### Issue

1. Does the Residential Tenancy Branch have jurisdiction to hear this application?

### Analysis

The jurisdiction of the *Act*, and in turn my jurisdiction, is set out in section 2 of the *Act*. Subsection 2(1) of the *Act* sets out that:

**2(1)** Despite any other enactment..., this *Act* applies to tenancy agreements, rental units and other residential property.

“Tenancy agreement” is defined in section 1 of the *Act*:

“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 license to occupy a rental unit;

In order to have a tenancy agreement, there must be an intention by the parties to form the legal relationship of landlord and tenant. Without this intention no enforceable agreement under the *Act* arises from the relationship. Although there are situations where family agreements can be treated as legally enforceable, for the most part where family relationships are concerned, generally the relationship is viewed as non-contractual.

This relationship lacks the indicia of a tenancy. There is no written tenancy agreement and respondent V.R. did not pay a periodic, fixed sum as rent, but rather was permitted to stay on the subject property based on her familial relationship with the applicants. On this basis, I find that this is a family dispute, and the relationship between the parties is familial, rather than that of landlord and tenant. This is not a matter within the jurisdiction of the Residential Tenancy Branch.

### Conclusion

I decline jurisdiction over this application.

I make no determination on the merits of the application. Nothing in my decision prevents either party from advancing their claims before a court of competent 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*.

Dated: February 07, 2019

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Residential Tenancy Branch