



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OPL, FF

### Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for landlord's use of the property. The respondent did not appear at the hearing. The applicant testified that the respondent was served with notice of this hearing and the applicant's evidence in person on February 14, 2011 at the rental unit. The applicant then changed the submission to February 15, 2011. In the absence of evidence to the contrary, I accepted service was made and I continued to hear from the applicant without the respondent present.

The applicant's assistant proceeded to present background information related to this dispute. Upon hearing the background I determined that jurisdiction needed to be determined.

### Issue(s) to be Decided

Does the Residential Tenancy Act apply to this situation and do I have jurisdiction to resolve this dispute?

### Background and Evidence

I was provided the following testimony by the applicant.

The residential property is comprised of a main unit and a basement unit connected by an adjoining door. The applicant and respondent were in a personal relationship which ended prior to 2006 when the applicant purchased the residential property. The applicant permitted the respondent to live in the basement unit on a temporary basis while he resided in the main unit despite having a personal relationship that had ended. The respondent stayed much longer than agreed upon and would not move out. Approximately six months ago the applicant left the residential property due to allegations of assault. After the applicant left the property the respondent took possession of the entire property and began collecting rent for rooms in the house.

Upon enquiry, the applicant stated the respondent's monthly rent was "let's say \$300.00". The applicant stated that the respondent had not paid any rent for the past six months; however, the applicant has not issued a 10 Day Notice to End Tenancy for Unpaid Rent.

Upon enquiry, the applicant stated there is a written tenancy agreement; however, it was not provided as evidence for this hearing.

The applicant also stated that he has issued a 1 Month Notice to End Tenancy in the recent past but the respondent did not move out and the applicant did not pursue an Order of Possession based upon the 1 Month Notice. The landlord explained that the reason given on the 1 Month Notice was that he wanted the tenant to vacate the property so that he could sell it.

The applicant testified that the respondent was served with a 2 Month Notice to End Tenancy for Landlord's Use of Property in person at the rental unit on January 27, 2011. The respondent did not dispute the Notice and the applicant believes the respondent will not vacate.

Provided as documentary evidence for this hearing was a copy of the 2 Month Notice and other documents showing the applicant is the registered owner and mortgagor for the property.

### Analysis

The Act does not apply to every type of relationship between two or more parties. The Act and my jurisdiction to resolve disputes are limited to relationships between landlords and tenants under a tenancy agreement. Further, where a tenant may have an interest in the property that is greater than the right to possess under a tenancy agreement I may not hear the dispute. Thus, I must be satisfied that the parties have or had a tenancy agreement with respect to the tenant's right to possession of the property only.

In addition, certain tenancy relationships are specifically excluded from the provisions of the Act pursuant to section 4 of the Act. Among other exemptions, section 4 provides that the Act does not apply to living accommodation where the owner and an occupant share a kitchen or bathroom.

Given the testimony I heard I find the applicant has acted in several ways that are highly unusual for landlord and tenant relationship. The applicant's testimony did not persuade me that the respondent's monthly rent, as agreed upon under a tenancy

agreement, was \$300.00. Even if that were the amount agreed upon, it is extremely low for a basement unit in Surrey and the applicant has not pursued an end to the tenancy for unpaid rent. The landlord also claims to have issued a 1 Month Notice to the respondent yet the reason given for its issuance is not a permissible reason under the Act. Further, the applicant vacated the property leaving the respondent to take possession of another unit of the property without consent yet the applicant has chosen to attempt to regain possession using a 2 Month Notice to End Tenancy.

Given the above circumstances and in the absence of a copy of the written tenancy agreement, or any other evidence that the respondent paid rent as a tenant for occupation of the basement unit, I find I am not satisfied that the Act applies to this dispute. Therefore, I refuse to take jurisdiction to resolve this dispute.

### Conclusion

I have declined jurisdiction 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: February 24, 2011.

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Residential Tenancy Branch