



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, CNR, O

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Applicant on March 1, 2017 to cancel a notice to end tenancy for the use of the dispute property and for “Other” issues, namely to identify the correct address for service on the Respondent. The Applicant amended the Application on March 15, 2017 to cancel a notice to end tenancy for unpaid rent.

The Applicant and Respondent appeared for the hearing. The Applicant provided affirmed testimony and was represented by a legal advocate who made submissions on behalf of the Applicant. The Applicant also had an assistant with him who did not testify.

The Respondent, who is the legal owner of the rental unit with the Co-owner, was represented by her grandson as her agent in this hearing because he had power of attorney for the Respondent. The Respondent’s agent provided affirmed testimony. The Co-owner of the rental unit and assistant for the Respondent’s agent also appeared for the hearing, but did not testify.

The parties confirmed receipt of the Application and each other’s documentary evidence served prior to the hearing. The hearing process was explained to the parties and no questions of the proceedings were asked. The parties were given a full opportunity to present evidence, make submissions to me, and to cross examine the other party on the evidence provided.

### Issues to be Decided

- Does the Act have jurisdiction in this case?
- If so, should the notices to end tenancy be cancelled?

### Background and Evidence

The parties confirmed that the Applicant was the son of both the Respondent and the Co-owner (the "Parents") and that the Respondent's agent was the grandson of the Respondent.

The Applicant testified that 16 years ago he was given occupancy of the basement suite by his parents who own the residential home. The Applicant confirmed that he was not required to pay any rent and no written tenancy agreement was signed. Neither was a security deposit requested or paid by the Applicant.

The Applicant confirmed that the reason why he was allowed to move into the basement suite was to give him a place to stay. However, after a period of time he started to provide his parents with caregiving and caretaking services. However, no exact duties were specified, documented, or agreed upon.

The Applicant confirmed that he had access to the basement suite through the main portion of the residential home where his parents reside as well as having his own separate access on the side of the house. The Applicant also confirmed that his access to his parents' portion of the home was not restricted and vice versa. The Applicant stated that if his parents wanted to come into the basement suite they would not have to give any written notice as they often used the laundry room which was located in the basement suite.

The Respondent's agent was asked to confirm the Applicant's testimony and he stated that there were no discrepancies. The Respondent's agent confirmed that the Applicant had not paid any rent to the Respondent in the 16 years he had occupied the basement suite.

The Respondent's agent explained that the Applicant had been give occupancy of the basement suite by his parents because the Respondent had nowhere else to go. However, after he started to live in the basement suite, the Applicant started to party and cause disturbance to the parents and even moved in a girlfriend. The Respondent's agent confirmed that it was only because the Applicant started to get out of control did his parents tell him that he had to earn his keep by doing jobs around the house and care for them, which the Applicant has not done.

The Respondent's agent stated that in February 2017, the Applicant's parents got sick and tired of the Applicant and told him that he had to pay rent of \$500.00 per month starting March 1, 2017 otherwise he would have to vacate the basement suite in order

to allow his parents to rent it out to someone who was willing to pay rent. The Respondent's agent stated that they entered into an oral agreement with the Applicant for him to pay rent for this amount from March 2017 onwards.

The Respondent's agent confirmed that the Applicant was served with a 2 Month Notice to End Tenancy for the Landlord's Use of Property (the "2 Month Notice") on February 27, 2017. The reason for ending the tenancy stipulated on the 2 Month Notice is because the Respondent has all the necessary permits and approvals required by law to renovate or repair the rental unit in a manner that requires the rental unit to be vacant. The Respondent's agent also confirmed that the Applicant had been served with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10 Day Notice") on March 10, 2016 for failure to pay \$500.00 for March 2017 rent.

The Respondent's agent confirmed that the Applicant's parents just want the Applicant out so that they can renovate the basement suite and rent it out to tenants willing to pay rent. The Respondent's agent explained that the basement suite was infested with beg bugs and mold, and the carpets need to be replaced as the basement suite is not in a sanitary condition. The Respondent's agent stated that the Applicant claims to have paid rent for this tenancy but the Applicant has provided no evidence of this.

The Applicant's legal advocate pointed out that the Respondent had provided no evidence or documentation showing the work that they intended to carry out. The Applicant's legal counsel submitted that the definition of rent under the *Residential Tenancy Act* (the "Act") does include an exchange for services and in this respect, the Applicant had provided caretaker and caregiving services to his parents.

The Applicant's legal advocate denied that any oral agreement had been entered into for the amount of \$500.00 per month but that the Applicant was willing to negotiate a tenancy with terms and conditions with the Respondent in this hearing. However, the Respondent's agent was not willing to entertain any such agreement. The parties were asked if they had any further evidence or submissions to make before the hearing was concluded, and no further evidence was presented.

### Analysis

Having heard both parties' evidence provided to me in this hearing, I must first consider the issue of whether a tenancy in this dispute has been established. In this respect, I turn to Policy Guideline 9 on Tenancy Agreements and Licences to Occupy. This explains when a tenancy under the Act has been entered into. It also lists a number of conditions an arbitrator may consider surrounding the occupation of the premises and

what the parties intended in the circumstances. However, an arbitrator is not limited or restricted to these grounds alone. The guideline states that some of the factors that may weigh against finding that a tenancy exists between the parties are as follows:

- Payment of a security deposit is not required.
- The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.
- The occupier pays property taxes and utilities but not a fixed amount for rent.
- The owner, or other person allowing occupancy, retains the right to enter the site without notice.
- The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.
- The parties have agreed that the occupier may be evicted without a reason, or may vacate without notice.

Having taken into consideration the above factors, I am unable to find that a tenancy had been established between the parties 16 years ago. No written tenancy agreement was signed by the parties and no security deposit was exchanged. Rather, I find that there is an undisputed family relationship between the parties and that occupancy of the basement suite was provided to the Applicant out of generosity rather than the purposes of entering in a tenancy that would have otherwise been governed by the Act.

In addition, the parties were at liberty to enter each other's portion of the home without written notice that would otherwise be required by a tenancy under the Act.

Furthermore, there is insufficient evidence before me from any of the parties that rent monies were actually exchanged for occupancy of the basement suite. It is correct that the Act provides that rent does not have to be paid only in cash but can be paid in exchange for a value or right given or agreed upon.

In this respect, I find there is insufficient evidence before me that the intent of the parties when the Applicant started to occupy the rental unit 16 years ago was that occupancy was provided and hinged on the Applicant's requirement to provide caretaking or caregiving services in exchange for rent. I find the evidence before me suggest that the Applicant was to undertake these services as a result of the Applicant's alleged disturbances while he resided there rather than a business tenancy arrangement.

In addition, there is also insufficient evidence to show that a set amount of monthly rent had been assigned to this arrangement and that in exchange for occupancy the Applicant was required to do a set amount of work to meet the obligation to pay rent under an oral or written agreement.

I find that there is also insufficient evidence before me that the parties entered into any agreement for a tenancy to start in February or March 2017. In this respect, no party is able to unilaterally change a rental situation for it to come under the Act without the consent of the other party. The parties were at odds as to what amount the Applicant was required to pay for occupancy of the basement suite and therefore on this basis, I am unable to conclude that any tenancy had been established between the parties.

Based on the totality of the evidence before me and on the balance of probabilities, I find the parties have failed to disclose sufficient evidence to show that a tenancy agreement under the Act has been entered into between them. Therefore, I must decline jurisdiction in this matter. The parties are at liberty to seek alternative legal remedies to address this dispute.

### Conclusion

The parties have not entered into a tenancy agreement that would be governed by the Act. Therefore, I decline jurisdiction in this matter.

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: April 12, 2017

---

Residential Tenancy Branch