



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, LRE, MNDCT, OLC, RP, RR

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on June 07, 2019 (the “Application”). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 03, 2019 (the “Notice”);
- To suspend or set conditions on the Landlord's right to enter the rental unit;
- For the Landlord to comply with the Act, regulation and/or the tenancy agreement;
- For repairs to be made to the unit or property;
- To reduce rent for repairs, services or facilities agreed upon but not provided; and
- For compensation for monetary loss or other money owed.

The Tenant appeared at the hearing. The Landlord appeared at the hearing with K.P. to assist. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenant had not submitted evidence. I addressed service of the hearing package and Landlord's evidence and no issues arose.

Pursuant to rule 2.3 of the Rules of Procedure, I told the Tenant I would consider his dispute of the Notice and dismiss the remaining claims with leave to re-apply as they are not sufficiently related to the dispute of the Notice. The remaining claims are

dismissed with leave to re-apply. This does not extend any time limits set out in the *Residential Tenancy Act* (the “*Act*”).

The Landlord raised an issue in relation to the jurisdiction of the RTB to decide this matter. The Landlord and K.P. took the position that the Landlord is not a landlord and the Tenant is a roommate or occupant of the Landlord.

K.P. testified as follows. The Landlord has a tenancy agreement with the owner of the rental unit address which is a house. The house has three bedrooms downstairs with a kitchen and bathroom and three bedrooms upstairs with a kitchen and bathroom. There is a door between the upstairs and downstairs that is usually locked. The Landlord lives upstairs. The Tenant lives downstairs. The Tenant is not a tenant because he does not have a tenancy agreement with the Landlord. The Tenant moved into the rental unit September of 2018. There was no written tenancy agreement, the agreement was verbal. The agreement was on a month-to-month basis. It was agreed the Tenant would pay the Landlord \$750.00 in rent per month by the first day of each month.

While addressing the Notice, K.P. testified that the Landlord has previously given the Tenant receipts for rent payments.

The Tenant took the position that he is a tenant and not an occupant or roommate of the Landlord. He testified as follows. He moved into the rental unit September of 2018. The rental unit address is a house with an upstairs unit and downstairs unit. These are self contained units each with their own bathroom and kitchen. There is a door between these with a lock. He rents a room in the downstairs suite. Other individuals rent out the other two rooms. The Landlord lives in the upstairs suite. Him and the Landlord agreed he would pay \$750.00 in rent by the first of each month. There was a written agreement. It was for a one-year lease.

The definition of “landlord” in section 1 of the *Act* states:

“landlord”, in relation to a rental unit, includes any of the following...

(c) a person, other than a tenant occupying the rental unit, who

(i) is entitled to possession of the rental unit, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

Policy Guideline 27 deals with the jurisdiction of the RTB and states as follows at page six:

The RTA gives the director authority to resolve disputes between landlords and tenants. However, a tenant who is entitled to possession of a rental unit and is occupying that rental unit is excluded by definition from being a landlord in the RTA. That means the director has no jurisdiction to resolve disputes between co-tenants, tenants in common, or roommates.

For example, if Tenant A enters into a tenancy agreement to rent a 2 bedroom rental unit from their landlord and then rents the second bedroom out to Tenant B, the RTA would not apply to a dispute between those tenants even if Tenant B has exclusive possession of the second bedroom. Under the tenancy agreement between Tenant A and the landlord, Tenant A is entitled to possession of the 2 bedroom rental unit. Since Tenant A is still occupying that rental unit, Tenant A is excluded by definition from being a landlord under the RTA. The director will decline jurisdiction to resolve these types of disputes.

However, if Tenant A is renting residential property (like a house) from their landlord that has more than one rental unit (like an upper suite and a lower suite) and Tenant A rents out the lower suite to Tenant B, the RTA may apply because Tenant A may meet the definition of a landlord. The director may take jurisdiction in these matters.

I find the Landlord does meet the definition of “landlord” in section 1 of the *Act*. He is entitled to possession of the lower suite given his tenancy agreement with the owner of the house. He is not a tenant occupying the lower suite as he lives in the upper suite. The suites are self contained and have a locked door between them. In these circumstances, I find they are separate suites. The Landlord has exercised the rights of a landlord under the *Act* in relation to the lower suite. The Landlord agreed to rent the Tenant a room in the lower suite. The Landlord collected rent from the Tenant. The Landlord served the Tenant with the Notice.

I find this situation to be like that outlined in Policy Guideline 27 and highlighted above. I do not accept that the Tenant is an occupant or roommate as he does not live in the upper unit with the Landlord. I am satisfied the RTB has jurisdiction in this matter.

I note that K.P. submitted that there is no tenancy agreement between the Landlord and Tenant as there was nothing in writing. This does not preclude there being a tenancy agreement between the parties as the definition of "tenancy agreement" in section 1 of the *Act* includes an oral agreement.

During the hearing, I raised the possibility of settlement pursuant to section 63(1) of the *Act* which allows an arbitrator to assist the parties to settle the dispute.

I explained the settlement option to the parties who did not have questions about this. The parties agreed to discuss settlement.

Prior to ending the hearing, I confirmed the terms of the settlement agreement with the parties. I told the parties I would issue an Order of Possession. I confirmed with the parties that all issues had been covered. The parties confirmed they were agreeing to the settlement voluntarily and without pressure.

#### Settlement Agreement

The Landlord and Tenant agree as follows:

1. The Notice is cancelled.
2. The tenancy will end and the Tenant will vacate the rental unit no later than 3:00 p.m. on August 01, 2019.
3. The Landlord agrees to allow the Tenant access to the internet and laundry.
4. All other rights and obligations of the parties under the tenancy agreement and *Act* continue until the tenancy ends August 01, 2019 at 3:00 p.m.

This agreement is fully binding on the parties and is in full and final satisfaction of this dispute.

The Landlord is granted an Order of Possession for the rental unit which is effective at 3:00 p.m. on August 01, 2019. If the Tenant fails to vacate the rental unit in accordance with the settlement agreement set out above, the Landlord must serve the Tenant with this Order. If the Tenant fails to vacate the rental unit in accordance with the Order, the Order may be enforced in the Supreme Court as an order of that Court.

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: July 19, 2019

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Residential Tenancy Branch