



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

**MNDC, FF**

### Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for compensation for damage or loss under the Act and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

### Preliminary Matter

The tenant served the landlord with the July 19, 2010, Notice of hearing sent via registered mail on November 16, 2010. The landlord confirmed receipt of the mail on December 4, 2010. The tenant did not serve the Notice within the 3 days required by the Residential Tenancy Branch Rules of Procedure, as she believed the same rules that apply to evidence service applied to service of the Notice of hearing.

The landlord confirmed he had read through the evidence package and I found that this hearing would proceed so that a determination could first be made in relation to jurisdiction. The landlord did not object to this intention.

### Jurisdiction

The parties agreed that the tenant moved into the rental unit on May 4, 2010. During the short period of time that the tenant resided in the home the landlord's belongings were not moved out, the landlord maintained his own bedroom in the home and used the bathroom in the basement; which was a part of what the tenant considered to be the rental unit.

The landlord owns the home and has a house nearby that was not ready for occupation. The landlord was present in the rental home on a daily basis and slept in the home on occasion.

The relevant definitions, from section 4 of *Residential Tenancy Act* (the "Act"), defining what is not covered by the Act, are, in part:

- (a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,
- (b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,
- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation**

(Emphasis added)

I find that the tenant moved into a home which was occupied by the owner of the home. The landlord shared the bathroom with the tenant, attended at the rental unit any time of day or night, had a bedroom for his own use and on occasion slept in the home.

As the owner of the home lived in the rental unit and shared the bathroom facilities on a daily basis, with the tenant, I find that the relationship between the parties did not constitute a tenancy, based on section 4 of the Act; that jurisdiction does not exist and that a remedy is not available under the Act.

Therefore, I find that the application is dismissed.

### Conclusion

As I have determined that this dispute does not fall within the jurisdiction of the Act, the application is dismissed.

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: December 06, 2010.

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Dispute Resolution Officer