



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNDC, MNSD

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This is a request for a monetary order in the amount of \$2153.69 however I dealt first with the question of jurisdiction.

### Background and Evidence

The landlord argued that she felt there was no jurisdiction under the Residential Tenancy Act, because she owns the house and shares the kitchen facilities with the tenant.

The landlord stated that the tenant used the kitchen on a regular basis and had access to the kitchen at all times, and the tenant frequently came into the kitchen to do her baking.

The tenant testified that she did have unrestricted access to the kitchen to do her baking however she argued that she only used it approximately once every two weeks to bake muffins.

Agent for the tenant argued that he believes the Residential Tenancy Branch does not have jurisdiction, as a previous Supreme Court decision found that occasional use of

kitchen facilities could not be considered shared accommodation. The tenant's agent has not supplied a copy of that decision to this hearing.

### Analysis

It is my decision that this tenancy does not fall within the jurisdiction of the Residential Tenancy Act

Section 4(c) of the act states:

**4** This Act does not apply to

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

In this case it is my finding that the tenant had unrestricted access to the kitchen facilities, and used the kitchen on a regular basis and therefore since the kitchen is shared with the owner of the accommodation, the Residential Tenancy Act does not apply to this tenancy.

This is not a case where the tenant was simply given occasional use of the landlord's kitchen. Access to the kitchen was unrestricted and if the tenant chose to only bake every two weeks that was her choice and not a restriction put on her by the landlord.

### Conclusion

I declined jurisdiction over 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 *Residential Tenancy Act*.

Dated: September 15, 2011.

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Residential Tenancy Branch