



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNL, MNDC

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end tenancy and a monetary order. Although served with the Application for Dispute Resolution, Notice of Hearing, and Amended Application for Dispute Resolution by registered mail, the landlord did not appear.

At the beginning of the hearing the tenant advised he had moved out of the rental unit making the application to set aside the notice to end tenancy unnecessary.

### Preliminary Issue(s) to be Decided

Does the Residential Tenancy Branch have jurisdiction over this dispute?

### Background and Evidence

The tenant is a wheelchair user. He rented part of the basement from the landlord. He had his own bedroom and bathroom. There were minimal kitchen facilities in this area; only a microwave oven and a mini refrigerator. Part of the rental agreement was that the landlord would provide the tenant with three meals a day. Those meals were prepared upstairs in the landlord's kitchen.

The landlord rents the home from the owner of the property. The tenant does not know any of the details of the landlord's arrangement with the owner. The tenant has not had any interaction with the owner – he made all the arrangements with the landlord and pays his rent to the landlord.

There is another tenant in a different party of the basement. The tenant believes that person pays their rent directly to the owner of the property.

### Analysis

The Residential Tenancy Branch has been created by statute, the *Residential Tenancy Act*, and can only hear and resolve disputes that are within the jurisdiction created by the statute.

Section 2 of the *Act* states that the Act applies to tenancy agreements. It defines “tenancy agreement” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy.

“Landlord” is defined as:

- the owner of the rental unit;
- the owner’s agent;
- a person acting on behalf of the owner;
- a person, other than a tenant occupying the rental unit, who is entitled to possession of the rental unit and exercises any of the rights of a landlord under a tenancy agreement. (Emphasis added).

The landlord is renting a portion of the house from the owner of the property, including the portion he is renting to the tenant. This makes him “ a tenant occupying a rental unit”. As such he is specifically excluded from the definition of landlord and therefore, any arrangement he makes to sublet a portion of the rental unit is excluded from the operation of the *Residential Tenancy Act*.

#### Conclusion

The Residential Tenancy Branch does not have jurisdiction over this dispute. The tenant will have to bring his claim for monetary compensation in the Small Claims 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 *Residential Tenancy Act*.

Dated: July 16, 2013

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Residential Tenancy Branch