



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, FF. O

### Introduction

This hearing dealt with two related applications. The tenant has applied for a monetary order and an order that the landlord comply with the Act, regulation or tenancy agreement. The landlord has applied for an order of possession. Both parties appeared and had an opportunity to be heard. As the parties and circumstances are the same on both applications one decision will be rendered.

### Preliminary Issue(s) to be Decided

Does the Residential Tenancy Branch have jurisdiction over this dispute?

### Background and Evidence

The rental unit is a two bedroom/one bathroom apartment. In addition to the two bedrooms, there is also a den. The apartment is owned by PU and is managed by V.M. Ltd.

The landlord, a university student, moved into this unit in September, 2012. She has exclusive possession of one bedroom and shares the rest of the space with her two roommates.

According to the landlord, the tenancy agreement is between her roommate, PT, and PU. She paid \$575.00 to PT every month as her share of the rent and PT paid the rent to the management company.

The three roommates shared the utility expenses that were not included in the rent. The Shaw bill was in the landlord's name. She testified that the account had been transferred from her previous residence. The landlord did not know how the other utility bills were registered; she thought perhaps the hydro bill was in PT's name.

The landlord was planning on moving so she found a sub-let for her room, the tenant. On June 1 they entered into an agreement whereby the tenant took over the landlord's place in the apartment. He moved into the apartment on June 3.

He argued that the fact that the landlord's name was on the directory at the front of the building and that the Shaw bill was in her name established that she was a landlord within the meaning of the law. He did testify that he expected that someone else was actually the owner.

### 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).

A copy of the tenancy agreement between the owner of the unit and the person or persons who are named as tenants on that agreement was not filed in evidence. If the landlord was named on that tenancy agreement as a tenant, she would be "a tenant occupying the rental unit". As such, she is specifically excluded from the definition of landlord and, therefore, any arrangement she makes to sublet a portion of the rental unit is excluded from the operation of the *Residential Tenancy Act*. If she was not named as a tenant, she is neither a landlord nor a tenant under the *Act* and any arrangement she makes is not included in the jurisdiction of the *Act*.

The fact that the Shaw bill was in her name is irrelevant. Many tenancy agreements require the tenant to place some or all of the utilities in the tenant's name. This fact does not change the person's status – they are still tenant's occupying a rental unit.

### Conclusion

The Residential Tenancy Branch does not have jurisdiction over this dispute.

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 15, 2013

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Residential Tenancy Branch