



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RPP, RR, MNDC, FF, O

### Introduction

This hearing was convened by way of conference call in response to the tenants application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to return the tenants personal property; to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; other issues; and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The hearing was adjourned to allow the landlord time to provide evidence as the tenants evidence package did not arrive within five days before the hearing. The landlord questioned the Residential Tenancy Offices Jurisdiction in this matter. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision. The hearing was reconvened on today's date and the question of jurisdiction was addressed at the outset of the hearing.

### Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the return of her personal property?

- Is the tenant entitled to reduce rent for repairs, services or facilities agreed upon but not provided?
- Does the Residential Tenancy Office have jurisdiction in this matter?

### Background and Evidence

The parties agree that this tenancy for this unit started on March 01, 2012 although the tenant had previously lived in the landlords unit next door. This was a fixed term tenancy which was not due to expire until February 28, 2014. Rent for this unit was agreed at \$2650.00 per month and this was discounted to \$2,450.00 per month. No security deposit was paid for this rental unit.

The landlord raised the matter with the Residential Tenancy Office having jurisdiction in this matter as the landlord testifies that this unit was his primary residence until 2010 and the landlord still retains a room in the unit and the right to use both the kitchen and bathroom facilities and to enter the unit without Notice. The landlord testifies that the tenant does not have exclusive possession of the rental unit and therefore the Residential Tenancy Office does not have jurisdiction in this matter.

The tenant agrees that the landlord does retain a room in the unit and has the right to come into the unit at any time and use the kitchen and bathroom facilities.

### Analysis

I have considered the matter of Jurisdiction at the outset of this hearing. I refer the parties to s. 4(c) of the *Residential Tenancy Act* which states that the *Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. The Residential Tenancy Policy Guidelines # 9 provides more clarification on this matter and states, in part,

Under a tenancy agreement, the tenant is given exclusive possession of the site for a term, which can include month to month. The landlord may only enter the site with the consent of the tenant. It goes on to add that if there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created, unless there are circumstances that suggest otherwise.

Some of the factors that may weigh against finding a tenancy are:

- Payment of a security deposit is not required.
- The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.
- The occupier pays property taxes and utilities but not a fixed amount for rent.
- The owner, or other person allowing occupancy, retains the right to enter the site without notice.
- The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.
- The parties have agreed that the occupier may be evicted without a reason, or may vacate without notice.

The arbitrator will weigh all of the factors for and against finding that a tenancy exists, even where the written contract specifies a license or tenancy agreement. In this matter there is a tenancy agreement for two years in place however no security deposit was asked for or paid at the start of this tenancy for this unit. The parties agree that the tenant did not have exclusive Possession of the rental unit as the landlord/owner retained a room in the unit and was able to freely enter the unit without notice to use this room along with other areas including the kitchen and bathroom.

I must therefore decline jurisdiction in this matter and find that the *Act* does not apply to this agreement.

The tenant is at liberty to seek resolution through an alternative legal remedy to resolve this matter.

Conclusion

As I decline jurisdiction in this matter the tenant's application is dismissed without leave to reapply

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 10, 2013

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Residential Tenancy Branch

