



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, MNDC, OLC, ERP, RP, LAT, O

This is an application filed by the Tenant for more time to be allowed to make an application to cancel a notice to end tenancy. If more time is allowed, to cancel a notice to end tenancy issued for cause, a monetary claim for money owed or compensation for damage or loss, an order for the Landlord to comply with the Act, regulations or tenancy agreement, for the Landlord to make emergency repairs for health or safety concerns, for the Landlord to make repairs to the unit, site or property and to authorize the Tenant to change the locks to the rental unit.

The Tenant attended and has provided documentary and direct evidence. The Landlord attended and states that no documentary evidence has been submitted by the Landlord. As both parties have attended and have confirmed receipt of the submitted documentary evidence and the Tenant's notice of hearing package, I am satisfied that both parties have been properly served with the notice of hearing package and the submitted documentary evidence of the Tenant.

The Tenant has clarified at the beginning of the hearing that his request for more time is withdrawn based upon the Landlord's hand written notice to end tenancy dated June 27, 2013 as it was not in the proper form. The Landlord has acknowledged this stating that a proper form dated July 22, 2013 was served upon the Tenant. The Tenant has acknowledged service of the notice dated July 22, 2013.

The Landlord states that the Residential Tenancy Branch does not have jurisdiction as this is a shared accommodation with the Landlord who is the owner. The Landlord states that the Tenant occupies a room in the basement and shares the main kitchen and bathrooms with the Landlord/Owner and other Tenants for the entire rental property. The Tenant disputes this stating that he does not share the kitchen and has his own cooking area downstairs. The Landlord states that he shares a refrigerator in the basement with the Tenant and that the Tenant has a hotplate in the hallway. The Landlord also refers to the Tenant's photographic evidence showing that the downstairs area with the fridge is open.

Section 4 of the Residential Tenancy 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,**

I prefer the evidence of the Landlord over that of the Tenant. The Landlord has stated that there is only 1 main kitchen upstairs and that there are bathrooms shared amongst the Landlord/Owner and the 4 Tenants of the rental building. The Landlord has stated that the downstairs refrigerator is shared with the Tenant. The Tenant has confirmed that there is no kitchen in the basement, but that he makes use of a hotplate and refrigerator downstairs. I find on a balance of probabilities that the Landlord has established that this is shared accommodations with the owner, that the Landlord's claim that Section 4 that the Residential Tenancy Act does not apply has been proven. As such, I decline jurisdiction to adjudicate 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: August 09, 2013

Residential Tenancy Branch

