



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, RPP, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The applicant/tenant testified that on September 9, 2013, he sent the respondent/landlord a copy of his dispute resolution hearing package by registered mail. The respondent confirmed received the hearing package. I am satisfied that the respondent was served with the hearing package in accordance with the *Act*.

### Issues(s) to be Decided

Does this tenancy fall within the jurisdiction of the *Act*? If so, is the applicant/tenant entitled to a monetary Order?

### Background and Evidence

The respondent testified that she rents out rooms in this duplex property on a nightly, weekly or monthly basis. She said that rent fluctuates depending on the time frame when the prospective renter contacts her, the availability of other rooms in her facility, and whether or not board is included in the terms of the rental. Her regular nightly rate is \$25.00.

The respondent testified that there are four kitchens and six bathrooms in this duplex. She testified that she has access to and uses the bathroom in the basement from time-to-time when she is working downstairs and also cooks in the kitchen in the basement

when the weather is hot. The applicant testified that he never saw the respondent use the basement kitchen and that she had her own bathroom in the upstairs portion of the duplex.

The parties agreed that the applicant started living in one of the basement rooms in this duplex on February 12, 2013. The respondent said that the applicant paid \$250.00 for February 2013, \$500.00 for March 2013 and \$375.00 for that portion of April 2013 when he stayed at her duplex. The respondent gave undisputed sworn testimony that the applicant left this duplex on April 23, 2013. From April 23, 2013 until the applicant returned to Vancouver, the applicant testified that he was not paying rent to the landlord. No tenancy agreement, oral or otherwise, existed during that period.

The applicant said that he obtained the respondent's permission to leave some of his belongings in the duplex while he travelled to the Rocky Mountains to do some skiing. He then proceeded to travel to Banff and Calgary. He said that he returned at one point in June to stay at the duplex for another night, took some of his belongings with him, but left his remaining belongings behind. He testified that the respondent informed him on August 22, 2013, that she no longer had his belongings. The only written evidence supplied by either party for this hearing was the applicant's one-page list of possessions that he maintained were not properly retained by the respondent.

The respondent testified that she was not operating a storage service at her duplex and that, but for one day in June, when the applicant stayed in her duplex when the applicant was out of town, the applicant had not lived at the duplex since April 23, 2013. She said that she kept his belongings for a long time and enquired with him as to his wishes regarding these belongings before she eventually disposed of them.

#### Analysis

Section 4 of the *Act* reads in part as follows:

**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,...*

*(e) living accommodation occupied as vacation or travel accommodation,*

The circumstances surrounding the landlord's rental property might at some times be characterized as being occupied for vacation or travel accommodation. For example, for those rooms that are let out to occupants for a night or two at a nightly rate of

\$25.00, the rate charged by the respondent, the *Act* may not apply. In this case, the applicant's June 2013 stay in one of the rooms in this duplex for a single night when he returned to Vancouver would not fall within the *Act*.

Although there is conflicting evidence from the parties, I find on a balance of probabilities that the landlord likely does share the kitchen and bathroom facilities with her basement tenants in this rental unit. The nature of this housing arrangement suggests that she likely does work in the lower level of this duplex more frequently than would be the case in a standard rental property, due to her willingness to rent to roomers on a nightly basis. As such, I find it more likely than not that the respondent/landlord does use the kitchen and bathroom facilities in the portion of the premises rented to her roomers and boarders on a more frequent basis than would be the case for a more traditional type of tenancy arrangement. Under these circumstances and pursuant to section 4(c) of the *Act*, I find that the *Act* does not apply to this tenancy. I therefore have no jurisdiction to render a decision in this matter.

#### Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

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: October 21, 2013

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Residential Tenancy Branch

