



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, MNDC, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and unpaid rent, for authority to retain the tenant's security deposit, and for recovery of the filing fee.

The landlord attended; the tenant did not attend.

The landlord testified that she served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on November 9, 2013. Based upon the submissions of the landlord as addressed later in this decision, I cannot determine that the tenant (hereafter "respondent") was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act").

### *Preliminary issue-*

Before considering the merits of the landlord's application, I must determine whether there is jurisdiction under the *Residential Tenancy Act (Act)*. The legislation does not confer authority to consider disputes between all types of relationships between parties. Only relationships between landlords and tenants can be determined under the *Act*.

### Background and Evidence

The landlord (hereafter "applicant"), in response to my question, stated that there is no written tenancy agreement for the rental unit in question, which is in the lower portion of the residential property, a home owned and lived in by the applicant on the upper floor.

The applicant admitted that there was no separate, private entrance for the rental unit, and the rental unit does not have separate kitchen facilities. The applicant also stated

that she and the respondent do use the same bathroom located on the lower level, although they do not share a kitchen as the tenant does not live there and does not cook.

The applicant admitted that the respondent basically used the lower portion of the home for storage, and that he is rarely in the home, as she has seen him between 2-4 times within the past year.

The applicant confirmed that the respondent does have someone occasionally come by the residential property to collect mail.

### Analysis

Section 4 (c) of the *Act* 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. Additionally, a rental unit is defined in section 1 of the *Act* as a “living accommodation.”

In this case, I find the evidence supports that the rental unit in question is not a living accommodation and is used for storage, and is therefore excluded under section 1 of the *Act*. I also find the evidence supports that the applicant and respondent share at least a bathroom facility.

In light of the above, I find that the rental unit in question is not the respondent’s living accommodation and that as the parties share a bathroom facility, this application meets the above criteria for exclusion under the *Act*; I therefore decline to find jurisdiction to resolve this dispute.

The landlord is at liberty to seek the appropriate legal remedy to this dispute.

I also note that the applicant failed to prove that the respondent was served notice of this hearing under section 89 of the Residential Tenancy Act, as the applicant is required to serve the notice of hearing upon the respondent in person, or by registered mail to the address at which the person resides.

### Conclusion

I find the *Residential Tenancy Act* does not apply to this dispute and I have declined jurisdiction.

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* and is being mailed to both the applicant and the respondent.

Dated: December 20, 2013

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Residential Tenancy Branch

