



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This matter dealt with an application by the Tenant for the return of the security deposit.

At the start of the conference call the Landlord requested a decision whether the Residential Tenancy Branch had jurisdiction as he believed the living arrangement was shared accommodation. The Landlord said in clause 3 of the Agreement of Terms of Occupancy dated February 1, 2014; it states that the owner has use of the facilities which refer to the bathroom and kitchen. The Landlord continued to say section 19 states the agreement is for shared accommodation and the Landlord has access to the kitchen and bathroom. The Landlord said he did not use the kitchen but he did use the bathroom. The Tenant said the Landlord did not use the kitchen or bathroom and therefore it was not shared accommodation. The Tenant submitted photographs of the unit which showed the unit to have a bedroom, a bathroom, a kitchen and a living/dining area. The Landlord said the arrangement with the Tenant was only for a sleeping room. The Landlord submitted the advertisement for the rental space which showed only a sleeping room. The Landlord said the Tenant had use of the common area and the kitchen and bathroom, but these areas were shared space with the Landlord. The Tenant said the Landlord was not telling the truth. Further the Tenant did not submit any corroborative evidence to prove the rental unit did not have a shared bathroom and kitchen with the Landlord and the Tenant did not provide proof of a security deposit being paid. The Tenant said the security deposit of \$325.00 was paid on February 8, 2014 and the receipt got wet so he no longer has it. The Landlord said no security deposit was paid.

It is the responsibility of the applicant to prove his claims with testimony and corroborative evidence. I find the Tenant has not proved that a security deposit was paid and that the living arrangement was not shared accommodation. I accept the Landlord's occupancy agreement that establishes grounds that the living arrangement was shared accommodation. Section 4(c) of the Act states that the Act does not apply to situation where there is shared kitchen and bathroom with the owner of the property. Consequently there is no tenancy between the Applicant and the Respondent; therefore I do not have jurisdiction to make a finding in this matter. The Applicant may want to seek legal advice to determine how to proceed with his claims.

In the absence of evidence to show there is a tenancy between the Applicant and Respondent the Residential Tenancy Branch does not have jurisdiction in this situation. I dismiss the application as I find no authority to decide this matter under the *Residential Tenancy Act*.

Conclusion

The Tenant's application is dismissed for lack of 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*.

Dated: September 30, 2014

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Residential Tenancy Branch

