



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Applicant for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”); for the return of the Applicant’s security deposit; and to recover the filing fee for the cost of making this Application.

Both parties appeared for the hearing and provided affirmed testimony. The Respondent confirmed receipt of the Application and written evidence by registered mail.

The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence and make submissions to me.

### Preliminary Issues

At the start of the hearing the Respondent raised the issue of jurisdiction of the Residential Tenancy Branch in this matter and for this tenancy.

The Respondent testified that she was the owner of the residential property which was a four bedroom single family dwelling. The Respondent testified that the Applicant rented a bedroom from her and that he had access to the bathroom and kitchen facilities within the house which he used.

The Applicant was asked whether he was aware of the jurisdictional issue raised by the Respondent. Although the Applicant had provided written evidence prior to this hearing in which the Respondent raises the issue of jurisdiction, the Applicant claimed that he was not aware of none.

The Applicant testified that he did not share a bathroom and kitchen with the Respondent and that his monetary claim was valid and should be determined in this hearing.

The Applicant was questioned further about the nature of this tenancy and testified that he had a locked key for his bedroom and that at no point did he share any of the kitchen and bathrooms in the house with the Respondent.

The Respondent rebutted the Applicant's submissions and testified that the Respondent cooked popcorn in the kitchen that they shared and that occasionally she would use the same bathroom as him, although it was not cleaned by him. The Respondent testified that she had free access to the entire house including the Tenant's room which she would often have to go into in order to re-set the internet as this is where the modem for the home was located.

The Respondent testified that the Applicant's bedroom was the only portion of the home he was renting but that he had shared access to the common areas of the house. The Respondent testified that the Applicant would often come into the living area to watch sports.

The Respondent and Applicant both confirmed that apart from the Applicant's bedroom, there were no other areas of the home that were specifically restricted to the parties, either in writing or as a mutual understanding.

### Analysis & Conclusion

Section (4)(c) of the Act provides that the Act does not apply to living accommodation where a tenant shares bathroom and kitchen facilities with the owner of that accommodation.

In this case, I determine that there was no dispute that the Respondent was the owner of the property in question.

The parties did not submit a written tenancy agreement in written evidence that indicated areas of the home that the parties were restricted from entering.

I find that the Applicant was aware that the Respondent had raised the issue of jurisdiction for this tenancy in e-mail correspondence between them, which was submitted by the Applicant in written evidence. However, the Tenant failed to provide supporting evidence to dispute the Landlord's testimony in relation to his submission

that he did not share a kitchen and bathroom with the Respondent and that the Residential Tenancy Branch has jurisdiction in this matter.

In my determination, I find that the evidence shows that the owner of the property only sought to rent a room to the Tenant and that the owner retained access and control to the remaining portions of the home which would have likely resulted in some use of the kitchen and/or bathrooms within the home by the Applicant.

In the absence of supporting evidence to prove the Applicant's submissions that he did not share use of the kitchen and bathroom with the Respondent, I find that the oral evidence results in one party's word against the others.

Accordingly, I find that based on the evidence provided by the parties for this hearing, I do not have jurisdiction to hear and make findings on the Applicant's claim as I am not satisfied that the Applicant did **not** share kitchen and bathroom facilities with the Respondent.

As a result, I dismiss the Application without leave to re-apply.

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: November 12, 2014

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Residential Tenancy Branch

