



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDC, OLC, ERP, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss - Section 67;
2. An Order that the Landlord comply – Section 62;
3. An Order for emergency repairs – Section 32; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath.

### Issue(s) to be Decided

Does the Act apply to the living accommodation of the Tenant?

### Background and Evidence

The Tenant states that on December 1, 2013 she moved into a basement bedroom of a house and shared the basement kitchen and bathroom with 4 other persons. The Tenant states that she moved out of the room on November 17, 2014. The Tenant states that the Landlord does not live in the house, that he lives elsewhere in the city, and that the Landlord has never shared the kitchen and bathroom in the basement. The Tenant states that she does not know who lives on the third floor of the house. The Tenant provided a letter from one of the other persons living in the house and this letter indicates that the Landlord has not lived in the house during its tenancy.

The Landlord states that he both owns and lives in the house that has three floors. The Landlord states that he lives on the third floor containing three bedrooms and a bathroom and

uses the kitchen on the main floor. The Landlord states that he rents rooms on each floor to foreign exchange students to assist with his mortgage payments. The Landlord submits that the Tenant is not a foreign exchange student and that she was given a room on a temporary basis. The Landlord states that he has on occasion used the kitchen and bathroom on the basement floor and ate lunch in the basement kitchen with the Tenant on at least one occasion. The Landlord states that he stores cat medication in the basement fridge. The Landlord questions the veracity of the witness letter that is cut and pasted together and unsigned by the witness. The Landlord denies living anywhere else.

### Analysis

Section 4 of the Act provides that the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

The Landlord's evidence of his living arrangements in a house, that I accept is owned by the Landlord, is compelling, persuasive and believable. I also accept, given the Landlord's undisputed evidence of using the basement fridge to store cat medication, that that Landlord has access to and is not restricted from using the basement bathroom and kitchen. The Tenant's witness letter contains different fonts and appears contrived. The Tenant provided no evidence to support the Landlord's residence elsewhere. For these reasons I prefer the Landlord's evidence and find that the Tenant lived in accommodation in which the kitchen and bathroom were shared by the owning Landlord. As a result I find that the Act does not apply and I dismiss the Tenant's application.

### Conclusion

The application is dismissed.

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: December 19, 2014

