



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MT, OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent or loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66; and
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

The tenant did not attend this hearing, although I waited until 9:44 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that the tenant had vacated the rental unit and he sought to withdraw his application for an Order of Possession.

Under Rule 10.1 of the Rules of Procedure,

The hearing must commence at the scheduled time unless otherwise decided by the dispute resolution officer. The dispute resolution officer may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Given the tenant's lack of attendance and all of the circumstances of this matter, I dismiss the tenant's application without leave to re-apply.

The landlord testified that he served his Application for Dispute Resolution package by registered mail to the tenant on March 5, 2015. The landlord provided a receipt and a Canada Post tracking number with respect to this mailing. Pursuant to section 89 and 90 of the *Act*, I find the tenant deemed served with the landlord's application for dispute resolution on March 10, 2015, 5 days after its mailing.

### Preliminary Issue to be Decided

Does this tenancy fall within the scope of the *Residential Tenancy Act*?

### Background and Evidence

The landlord testified that this tenancy began on October 3, 2014. He testified that the rental amount was \$500.00 payable on the 30<sup>th</sup> of each month and that he continued to hold a \$250.00 security deposit paid by the tenant at the beginning of his tenancy. He testified that he did not have access to his receipts and could not remember the exact date that the security deposit was paid. The landlord submitted a copy of the tenancy agreement. That agreement had two different dates on it: October 3, 2014 and October 22, 2014.

The tenancy agreement submitted into documentary evidence included but is not limited to the following terms;

- No overnight guests. Anyone with guests past 10 pm gets an immediate 10 day notice.
- Alcohol consumption is restricted. Do it [some where] else, stay there till sober, then come home.
- Messes are an issue, immediately clean yours, be it in the bathroom, dishes, hallways, kitchen, laundry, parking and/or the grounds.
- Lose your keys, a \$125.00 replacement fee will be charged. If loses a second set - \$ or self eviction.
- The cornflake rules applies to all these signatory clauses; the breach of; and the resulting immediate eviction of the tenant with no refund of either rent or deposit and without prejudice.
- No street people.

The landlord testified that he is a partial owner in this property. He testified that this residence is a place where he has chosen to help people get back on their feet with temporary housing. His tenancy agreement begins by stating the address of the rental unit, rent and deposit information, the name of the tenant and the provision that the named tenant is “identified as the only ‘tenant’ who rents a furnished, lockable room in a house and agrees to the following ... to maintain a single room which shares bath, kitchen and laundry with other like tenants and the landlord”. It further states that a series of gifts from the landlord including services like cable and laundry as well as supplies like soap and toilet paper are provided to the tenant who does not fail to be paying the rent on time. The agreement indicates these ‘gifts’ are in exchange for respecting all of the landlord’s rental agreement.

The landlord testified that the tenant had paid rent for February 2015. He testified that the tenant had vacated the residence on or before March 1, 2015, failing to return the keys. The landlord testified that he has, as of yet, not re-rented the unit and he sought to recover costs associated with rental loss and re-keying the door to the house.

### Analysis

The landlord testified that this housing arrangement is a supportive housing environment. It has multiple restrictions that a tenant must abide by in order to maintain residence within this landlord’s house. The tenancy agreement clearly states that the tenants share bath, kitchen and other facilities with the landlord. The landlord testified that he is a partial owner of this property.

Section 4 of the *Residential Tenancy Act* identifies living situations that the *Act* does not apply to. These arrangements include, at section 4(c), “living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation”. At section 4(f) of the *Act*, a living accommodation provided for emergency shelter or transitional housing is also not under the purview of the *Act*. Also, housing that is made available in the course of providing rehabilitative or therapeutic treatment or services do not fall under the *Act*.

The landlord’s tenancy agreement states in the first paragraph that the tenants will share bathroom and kitchen facilities with the owner of the accommodation. He also testified that this is a house created to “help people get back on their feet”. This type of accommodation is specifically excluded from coverage under the *Act*.

Under these circumstances and based on the evidence before me, 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 either 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: March 26, 2015

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Residential Tenancy Branch

