



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            CNC, OLC, MNDC, FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenant on or about April 1, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on or about April 2, 2015. With respect to each of the applicant's claims I find as follows:

### Jurisdiction:

The landlord submits that I do not have jurisdiction by virtue of section 4(c) of the Residential Tenancy Act which provides as follows:

#### **What this Act does not apply to**

##### **4 This Act does not apply to**

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

The landlord submitted a decision involving another tenant dated May 14, 2015 in which the arbitrator in that case determined that he did not have jurisdiction.

The tenant submits that I have jurisdiction based on the following:

- The landlord was not living in the rental property when he rented it in September 2014. He submits the landlord ought not to be able to change the tenancy agreement which he originally entered into but moving back into the rental property.
- The tenant lives in the upstairs portion of the property with 4 other tenants. Each of the tenants rents a room in which they have exclusive possession. The 5 tenants share kitchen facilities and they share a bathroom. He has his own ½ bathroom containing a toilet. The landlord lives in the downstairs portion of the house. She has rented room to 4 other tenants in downstairs area. They share a bathroom and kitchen facilities downstairs.
- To gain access to the upstairs portion the landlord must go outside and re-enter the rental property. There are two separate civic addresses.

The landlord testified as follows:

- She goes upstairs on a daily basis and cleans.
- She uses the upstairs bathroom on a regular basis when the downstairs bathroom is being used by other occupants.
- Up until recently when problems arose between the landlord and the tenant she uses the upstairs kitchen once or twice a week.
- After carefully consider the disputed evidence I determined that I have jurisdiction for the following reasons:
- In my view a tenant cannot lose the rights afforded by the Residential Tenancy Act by the landlord subsequently moving into the rental property. The landlord did not live in the rental property when it was originally rented to the tenant. The tenancy agreement gave the tenant the rights afforded by the Residential Tenancy Act. This cannot be taken away by the landlord by moving back into the rental property.
- There are two separate rental properties with separate civic addresses. The landlord lives in the downstairs portion and she shares kitchen facilities and bathroom facilities with those tenants who live in that portion of the rental property. The tenant has his own ½ bathroom which is for his use only. I do not accept the submission of the landlord that her limited use of the upstairs bathroom and kitchen facilities has stripped the upstairs tenants of their rights under the Residential Tenancy Act.

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated April 1, 2015?
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on September 1, 2014. The tenancy agreement provided that the tenant(s) would pay rent of \$525 per month payable in advance on the first day of each month. The tenant testified he paid a security deposit and pet deposit totalling \$525 at the start of the tenancy. The landlord disputes this testimony although she was not sure how much if any security deposit the tenant paid.

Application to cancel the one month Notice to End Tenancy:

The landlord has acted on the basis that the Residential Tenancy Act does not apply. The One Month Notice to End Tenancy which she served on the tenant is a handwritten document and is not in the approved form.

Section 52 of the Residential Tenancy Act provides as follows:

**Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

I determined the Notice given by the landlord was not in the approved form and as a result is not effective. I ordered that the Notice to End Tenancy dated April 1, 2015 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

Application for a monetary order:

The tenant testified that he has continued to have difficulties with the landlord. He further stated that he wished to withdraw his claim for a monetary order so that he could have an opportunity to file another Application which would include all of his claims. I determined that was an appropriate way of dealing with the situation rather than splitting his claim. **I ordered that his application for a monetary order be dismissed with liberty to re-apply.**

The tenant was successful in having the Notice to End Tenancy set aside. As a result I ordered that the landlord pay to the tenant the sum of \$50 for the cost of the filing fee such sum may be applied against outstanding rent.

The landlord must be served with this Order as soon as possible.

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: May 13, 2015

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Residential Tenancy Branch

