



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MNDC, OLC, AAT

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order to have the landlords comply with the *Residential Tenancy Act (Act)*, regulation, or tenancy agreement; an order allowing access to the unit or site for the tenant or the tenant's guests; and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant; his advocate; his witness; the landlords and their legal counsel.

At the outset of this hearing the tenant submitted that he moved out of the rental unit in mid-June 2015 and as such there is no longer a need for an order to have the landlord comply with the *Act*, regulation or tenancy agreement or an order to allow access to the unit for the tenant's guests. As such, I amend the tenant's Application to exclude these two items.

Also at the outset of the hearing the landlords raised the issue of jurisdiction. The landlords submit that while the landlords have a separate living space for their family that has a separate kitchen and bathroom facilities they also share the kitchen and bathroom in the basement with the tenants.

The landlords submit that they always discuss with potential tenants that they have this arrangement prior to entering into tenancy agreements with them. The landlords submit that their daughter likes to bake and when she is baking the mother will cook in the basement kitchen.

The landlords also submit that when they are cleaning the tenants' common areas they will use the basement bathroom. The landlords also submit that the family uses a room in the basement as a computer and electronic games room. They state that when family members use that room they may use the basement bathroom as well.

The tenant submits that there is nothing in his tenancy agreement that indicates that he would have to share either the kitchen or bathroom with the landlord. The tenant submits that the landlord never started using the kitchen until the tenant had begun attempting to assert his rights in regard to his tenancy.

In support of their position the landlords submitted into copies of several emails from former and current tenants all of which state they understood at the time of entering their tenancy agreements that the landlord would share the kitchen and bathroom facilities in the basement with them.

The tenant stated, later in the hearing, that he had been attempting to get the other tenants in the basement to sign a petition against the landlord but that they had refused because they believed the landlord was allowed to share the kitchen and bathroom.

Section 4(c) of the *Act* states the *Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

I find the landlords' use of the kitchen facilities is not a requirement of the living accommodation for the landlords, as they have a separate kitchen that they use for the majority of their cooking needs. I find the fact the landlord's chose to use the basement kitchen at times when someone else is using their kitchen is simply a convenience and cannot be used to exempt the landlords from the jurisdiction of the *Act*.

I also find that the landlords' use of the bathroom when they are cleaning the common areas of the basement does not constitute a sharing of the bathroom with the landlord. However, as the landlords have a room in the basement that is not common area and is used by the landlords for their family, it is reasonable to accept that the landlords' family would share the basement bathroom with the tenants. As a result, I find this tenancy is exempt from the *Act*, pursuant to Section 4(c).

#### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for the loss of quiet enjoyment, pursuant to Sections 28, 30, 67, and 72 of the *Act*.

#### Conclusion

Based on the above, I decline jurisdiction on these matters. I note the tenant remains at liberty to pursue his claims through a court of competent 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: July 30, 2015

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Residential Tenancy Branch

