



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order permitting retention of the security deposit in partial satisfaction of the claim. The landlord appeared; the tenant did not.

The landlord testified that she handed the application for dispute resolution and notice of hearing to the tenant on August 31, 2015. When the tenant refused to accept it she taped the documents to his bedroom door. I find that service of the application for dispute resolution and notice of hearing was made in compliance with section 89(2) of the Residential Tenancy Act.

### Preliminary Issue(s) to be Decided

Does the Residential Tenancy Branch have jurisdiction over this dispute?

### Background and Evidence

The landlord rents the whole unit pursuant to a tenancy agreement on which she is named as the sole tenant. With the permission of her landlord she has two roommates pursuant to two separate agreements with her. They each pay her \$400.00 per month. She collects the rent from them and then pays her landlord the rent for the entire unit. There is only one kitchen in the rental unit.

### Analysis

The Residential Tenancy Branch has been created by statute, the *Residential Tenancy Act*, and can only hear and resolve disputes that are within the jurisdiction created by the statute.

Section 2 of the *Act* states that the Act applies to tenancy agreements. It defines “tenancy agreement” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy.

“Landlord” is defined as:

- the owner of the rental unit;
- the owner’s agent;
- a person acting on behalf of the owner;
- a person, other than a tenant occupying the rental unit, who is entitled to possession of the rental unit and exercises any of the rights of a landlord under a tenancy agreement. (Emphasis added).

The landlord is renting the whole living unit from the owner of the property. This makes her “a tenant occupying a rental unit”. As such she is specifically excluded from the definition of landlord and therefore, any arrangement she makes to sublet a portion of the rental unit is excluded from the operation of the *Residential Tenancy Act*.

The Residential Tenancy Branch does not have jurisdiction over this dispute. Further, the tenant does not have any of the protections given to tenants pursuant to the *Residential Tenancy Act*.

#### Conclusion

The Residential Tenancy Branch does not have jurisdiction over this dispute. Further, the tenant does not have any of the protections given to tenants pursuant to the *Residential Tenancy Act*.

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: October 29, 2015

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Residential Tenancy Branch

