



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, FF;    CNL, PSF, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for landlord's use of property, pursuant to section 55; and
- authorization to recover the filing fee for her application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated April 13, 2016 ("2 Month Notice"), pursuant to section 49;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65; and
- authorization to recover the filing fee for her application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 60 minutes in order to allow both parties to fully present their submissions.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The tenant confirmed that she served the landlord and the Residential Tenancy Branch ("RTB") with a copy of her 54-page written evidence package on June 3, 2016. I did not receive the evidence. The landlord said that she received the evidence and reviewed it on the morning of this hearing. The landlord objected to the admissibility of the evidence, claiming that it was late, may have been falsified, and she did not have a chance to respond to it. Accordingly, I did not consider the tenant's 54-page written evidence at the hearing as it was late, as per Rules 3.14 and 3.15 of the RTB *Rules of*

*Procedure*, and the landlord did not have a chance to respond to it. However, this evidence was irrelevant to this hearing, as my decision was made regarding a jurisdiction issue that was not raised by either party in their evidence but by me at the hearing. The tenant confirmed that her evidence was responding to the landlord's further notices to end tenancy and the fact that she was a "tenant" in a "tenancy" under the *Act*.

#### Preliminary Issue – Jurisdiction to hear Matter

Both parties agreed that the tenant resides in the basement suite of a house and the landlord resides on the main floor of the same house. The landlord testified that she owns the house. The tenant did not dispute this fact. The tenant said that she began residing in the basement around February 1, 2015, while the landlord said that it was sometime in January or February 2015.

The landlord confirmed that she has shared a kitchen and bathroom with the tenant since the time that the tenant began residing in the basement. She said that she would use the tenant's kitchen to prepare meals for both of them, as they are friends. She confirmed that she also used the tenant's bathroom when she spent time at the tenant's unit. The landlord testified that the tenant would make coffee for the landlord using the landlord's kitchen on a daily basis, as the tenant has keys and unlimited access to the landlord's suite.

The tenant explained that she does not live with the landlord. The tenant testified that she only used the landlord's bathroom about four to five times since she moved into the unit. She stated that she only did this while visiting the landlord because they are friends. The tenant testified that she did not use the landlord's kitchen. Upon questioning by the landlord, the tenant then testified that she used the landlord's kitchen on a daily basis to make coffee for the landlord but only because she had a medical directive from the landlord to care for her. The tenant agreed that she had keys to access the landlord's rental unit.

#### Analysis

Section 4(c) of the *Act*, outlines a tenancy in which the *Act* does not apply:

*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...*

It is undisputed that the landlord owns this living accommodation and that she shares the same kitchen and bathroom with the tenant. Both parties testified that they have

used the other party's bathroom and kitchen during the time that the tenant has been residing at the basement. The tenant uses the landlord's kitchen on a daily basis and has keys to access the landlord's unit. The *Act* specifically excludes tenancies whereby the owner of a rental unit shares a kitchen and bathroom with the tenant. Accordingly, I find that I am without jurisdiction to consider both parties' applications as the *Act* does not apply to this tenancy because it is excluded by section 4(c) of the *Act*.

I advised both parties about the above information during the hearing. I notified both parties that they could pursue their claims at the Provincial Court of British Columbia or the Supreme Court of British Columbia, if they wished to do so.

Both parties presented arguments regarding whether the tenant was a true "tenant" who paid rent under the *Act*, and whether this was a true "tenancy." However, as I found that section 4(c) of the *Act* applies in this case, I do not need to make a determination regarding the other arguments made by both parties.

#### Conclusion

I decline to hear both applications as I have no jurisdiction under section 4(c) of the *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: June 06, 2016

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Residential Tenancy Branch