



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MT, O

### Introduction

This hearing was convened by way of conference call in response to the Tenant's Application for Dispute Resolution (the "Application") made on February 27, 2017 requesting to cancel a 2 month notice to end tenancy for the Landlord's use of the property; for more time to cancel the notice to end tenancy, and for "Other" issues.

The Tenant, the Landlord, and the Landlord's legal counsel appeared for the hearing. However, only the Landlord and Tenant provided affirmed testimony and legal counsel made submissions and presented evidence for the Landlord.

### Preliminary Issues

The hearing process was explained to the parties and the Landlord and legal counsel had no questions on how the hearing would proceed. The Tenant raised a concern that as she had corresponded with legal counsel with evidence for this hearing, he should not be party to the hearing. The Tenant was informed of Rule 6.7 of the Residential Tenancy Branch Rules of Procedure (the "Rules") which allows any party to a dispute resolution hearing to be represented by an agent or lawyer. I also informed the Tenant that the exchange of evidence between her and the Landlord's legal counsel does not bar him from appearing and participating in this hearing as the Landlord's lawyer.

Legal counsel confirmed the Landlord had been served with the Tenant's Application by registered mail and with that Application was nine pages of evidence. The Tenant confirmed that she had received the Landlord's 32 pages of documentary evidence included a CD containing video footage which she had viewed prior to the hearing.

The Tenant explained that she had also submitted 25 pages of additional evidence to the Landlord two days prior to this hearing. Legal counsel confirmed the Landlord had not received this, likely because it had been sent to the Landlord late. The Tenant



provided the Canada Post tracking number into evidence and the Canada Post website shows that at the time of the hearing, the documents were still in transit.

I also noted the Tenant had provided multiple evidence packages to the Residential Tenancy Branch, some of which were duplicates and refaxes. The Tenant was asked why she had served these documents to the Landlord late pursuant to the 14 day time limit she had as provided for by Rule 3.14 of the Rules.

The Tenant explained that after March 1, 2017 the Landlord had thrown her out of the house without her possessions and therefore she was made homeless and did not have the funds to serve evidence to the Landlord in a timely fashion. The Tenant explained that she had submitted multiple evidence packages by fax via the government office because she was not sure they had gone through. The Tenant explained that the 25 pages of evidence she served to the Landlord pertained to the Landlord illegally throwing her out of the rental unit which also comprised of police evidence.

In my decision on whether to allow the Tenant's late evidence, I turned to the Landlord's documentary evidence. In that evidence, the Landlord submits that the *Residential Tenancy Act* (the "Act") does not apply to this dispute. Therefore, I informed the parties that before I was able to make any findings on the Tenant's Application, I must first consider the issue of whether the Act has jurisdiction in this matter.

I informed the parties that as the Tenant's additional 25 pages of evidence, which were not before the Landlord at the time of this hearing, did not pertain to the issue of jurisdiction, I would not consider that evidence until such time I determined the jurisdictional issues. I informed the parties that after the jurisdictional issue had been decided, I would give direction to the parties on the Tenant's late evidence.

In an effort to provide fairness to both parties on the issue of jurisdiction, I did not bar the parties from referring to their documentary evidence, but limited this to the issue of jurisdiction. I directed that if the Tenant referenced a document with respect to jurisdiction, and this was not before the Landlord, I would then consider whether to adjourn the matter to allow the Landlord to see that evidence.

### Issue to be Decided

Does the Act have jurisdiction in this case?

### Background and Evidence



Legal counsel for the Landlord explained that the Act does not apply to this dispute because the Landlord, who is the owner of the rental unit, shares kitchen and bathroom facilities with the Tenant.

Legal counsel pointed to a letter from the Landlord's insurance company which declares that there is only one kitchen in the house. The Landlord provided a residential appraisal report which contains pictures of the inside and outside of the home. In addition, the Landlord provided video footage showing all of the rooms throughout the residential property. The Landlord described the home as a detached two storey home with a basement, a kitchen, two bathrooms and three bedrooms.

The Landlord testified that the Tenant was renting a bedroom on the upper floor and that she used the kitchen with him in the home. The Landlord explained that the room was rented to the Tenant to look after his dog while he was away for periods of time for work. The Landlord confirmed that the Tenant did not have exclusive access to the bathrooms in the home or the kitchen and that if someone was using the bathroom downstairs, he would use the bathroom upstairs which the Tenant also used.

The Tenant rebutted stating that the photographs and the video footage of her portion of the rental unit were not correct. However, after asking the Tenant to describe all of the areas in the house in detail and how she exited and entered the home, I was satisfied that the video footage provided by the Landlord was of the residential home where the Tenant resided.

The Tenant stated that she did not rent a room from the Landlord but rather a suite which included a bedroom and a bathroom. The bathroom had an access door leading to a stair way to the back of the house and the bedroom had a door way leading to the landing area on the top floor close to the stairway going down to the front of the house. The Tenant's bedroom and bathroom had an internal door. The landing area by the Tenant's bedroom provided for the Landlord's bedroom and a third guest bedroom.

The Tenant stated that she had exclusive access to her suite and the Landlord was not allowed to enter her room or use the bathroom. The Tenant stated that she had a lock on the inside of the bathroom and bedroom door which she was only able to lock when she was inside her suite. The Tenant testified that she had asked the Landlord to put locks on the door and give her a key but the Landlord failed to do so. The Tenant confirmed that she had not made any of these requests to the Landlord in writing during the tenancy because she had nowhere else to go.



The Tenant confirmed that when she was not at the suite, the bathroom and her bedroom could not be locked from the outside but no one was allowed to go into these areas. The Tenant stated that her bedroom door was blocked by a television which was sitting on the stand. The Tenant denied that the Landlord ever used or is supposed to use her bathroom as the one for his use is located downstairs.

The Tenant denied that she uses the one kitchen in the home. The Tenant explained that she eats mainly salads and prepared food in her suite and washes and stores her cutlery in her suite and bathroom.

The Tenant explained that the only time she used the kitchen was to prepare meals for the Landlord's mother who visits and stays at the home but only at the Landlord's request. The Tenant explained that when the Landlord was not at the home, she only used the kitchen with the express permission of the Landlord to perform her duties which the Landlord had requested of her; therefore her use of the kitchen was part of her job. The Tenant confirmed that the parties had not signed a tenancy agreement that explained this arrangement and that the Landlord did not request a security deposit.

Legal counsel asked questions of the Landlord. In that questioning, the Landlord explained that the room the Tenant rented was not exclusive of the house and that the entrance and exit from the room was through the house either from the front door stairway or the back door stairway.

The Landlord stated that the Tenant prepared and cooked meals a couple of times a week and that she used the kitchen cupboards and the fridge and freezer to store her packaged and prepared foods, like oatmeal and eggs. The Landlord explained that the Tenant also had a coffee machine which was located in the kitchen.

The Landlord denied that he had stipulated or restricted the Tenant's use of the kitchen for the sole purpose of asking the Tenant to prepare meals for his mother. The Landlord explained that the Tenant and his mother were good friends and the Tenant often used the kitchen to prepare food for themselves as part of their friendship, not as a condition of the Tenant's stay.

The Tenant denied that she used the kitchen for storage or to prepare foods, stating that her coffee machine was located in her room and not in the kitchen. The Tenant stated that the Landlord was often gone from the home for long periods of time and during this time she did not use the kitchen. The Tenant stated that the Landlord reduced her rent during the tenancy because she had performed jobs around the house for the Landlord.



The Landlord confirmed that the rent amount payable for this tenancy was \$400.00 and this was reduced for extra jobs the Tenant did around the house; however, this had nothing to do with her use of the kitchen in the home.

### Analysis

Section (4) (c) of the Act stipulates that the Act does not apply to living accommodation where the owner of the home shares bathroom or kitchen facilities with the tenant. In this case, it is undisputed that the Landlord is the home owner.

In making my findings on the issue of jurisdiction, I find this tenancy was established on an oral basis. There is no written tenancy agreement or document provided by the parties that records the exact arrangement the Tenant testified to or what the rent payable for the accommodation comprised of. In this respect, I only have the disputed testimony of the parties before me.

I find the Landlord's video evidence is the most convincing and corroborative evidence available to me. I find the video evidence shows that the area the Tenant was renting could only be accessed by going through the home either through the front door or back door and that the Tenant used the back door stairway which went through the home to access the area she was renting. These entries and exits were also able to be used by the Landlord. Therefore, I find that the area the Tenant was renting cannot be considered to be sufficiently independent or separate from the dwelling area the Landlord resided in, just like a basement suite with its own separate locked entrance and exit would be considered a separate rental unit.

I am satisfied by the evidence before me that the rental home only comprised of one kitchen which the Tenant and the Landlord both had access to. The Tenant failed to provide sufficient evidence to show that the Landlord had imposed restrictions on her use of the kitchen and had confined her use to times when he was either not present at the rental home or that it was to be specifically used for the purposes assigned by the Landlord, such as preparing and cooking meals for the Landlord's mother.

On the balance of probabilities, I find it highly unlikely that the Tenant would not have used the kitchen irrespective of whether the Landlord was there. I find the Tenant's submission that she stored her cutlery and dishes in an area not in the kitchen and washed her dishes in her bathroom sink to be implausible and unlikely, even though I am not able to determine the frequency of the kitchen use by the Tenant. I find that



regardless of how the tenant actually used the kitchen space, there is not sufficient evidence the Tenant was restricted by the agreement or direction of the Landlord.

Based on the foregoing, I find the Tenant did share kitchen facilities with the owner of the rental unit and therefore, this dispute cannot be determined by the Act as it has no jurisdiction. The Tenant is at liberty to seek alternative legal remedies to address her dispute.

### Conclusion

For the above reasons, I decline jurisdiction in this matter pursuant to 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 Act.

Dated: March 30, 2017

---

Residential Tenancy Branch